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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2004



ENROLLED

Committee SUBSTITUTE FOR Committee SUBSTITUTE FOR
SENATE BILL NO. 454

(By Senator BOWMAN, ET AL)



PASSED MARCH 13, 2004

In Effect 90 Days From Passage

FILED

2004 APR -7 P 5: 53

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 454

(SENATORS BOWMAN, MINARD, KESSLER, MCCABE, ROWE,
SNYDER, MINEAR AND MCKENZIE, *original sponsors*)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to repeal §8-24-1, §8-24-2, §8-24-3, §8-24-4, §8-24-5,
§8-24-6, §8-24-7, §8-24-8, §8-24-9, §8-24-10, §8-24-11,
§8-24-12, §8-24-13, §8-24-14, §8-24-15, §8-24-16, §8-24-17,
§8-24-18, §8-24-19, §8-24-20, §8-24-21, §8-24-22, §8-24-23,
§8-24-24, §8-24-25, §8-24-26, §8-24-27, §8-24-28, §8-24-29,
§8-24-30, §8-24-31, §8-24-32, §8-24-33, §8-24-34, §8-24-35,
§8-24-36, §8-24-37, §8-24-38, §8-24-39, §8-24-40, §8-24-41,
§8-24-42, §8-24-43, §8-24-44, §8-24-45, §8-24-46, §8-24-47,
§8-24-48, §8-24-49, §8-24-50, §8-24-50a, §8-24-50b, §8-24-
51, §8-24-52, §8-24-53, §8-24-54, §8-24-55, §8-24-56, §8-24-
57, §8-24-58, §8-24-59, §8-24-60, §8-24-61, §8-24-62, §8-24-
63, §8-24-64, §8-24-65, §8-24-66, §8-24-67, §8-24-68,

§8-24-69, §8-24-70, §8-24-71, §8-24-72, §8-24-73, §8-24-73a, §8-24-73b, §8-24-73c, §8-24-73d, §8-24-74, §8-24-74a, §8-24-74b, §8-24-74c, §8-24-75, §8-24-76, §8-24-77, §8-24-78, §8-24-79, §8-24-80, §8-24-81, §8-24-82, §8-24-83, §8-24-84 and §8-24-85 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §8A-1-1, §8A-1-2, §8A-2-1, §8A-2-2, §8A-2-3, §8A-2-4, §8A-2-5, §8A-2-6, §8A-2-7, §8A-2-8, §8A-2-9, §8A-2-10, §8A-2-11, §8A-3-1, §8A-3-2, §8A-3-3, §8A-3-4, §8A-3-5, §8A-3-6, §8A-3-7, §8A-3-8, §8A-3-9, §8A-3-10, §8A-3-11, §8A-3-12, §8A-3-13, §8A-3-14, §8A-4-1, §8A-4-2, §8A-4-3, §8A-4-4, §8A-4-5, §8A-4-6, §8A-4-7, §8A-5-1, §8A-5-2, §8A-5-3, §8A-5-4, §8A-5-5, §8A-5-6, §8A-5-7, §8A-5-8, §8A-5-9, §8A-5-10, §8A-5-11, §8A-5-12, §8A-6-1, §8A-6-2, §8A-6-3, §8A-7-1, §8A-7-2, §8A-7-3, §8A-7-4, §8A-7-5, §8A-7-6, §8A-7-7, §8A-7-8, §8A-7-9, §8A-7-10, §8A-7-11, §8A-7-12, §8A-7-13, §8A-8-1, §8A-8-2, §8A-8-3, §8A-8-4, §8A-8-5, §8A-8-6, §8A-8-7, §8A-8-8, §8A-8-9, §8A-8-10, §8A-8-11, §8A-8-12, §8A-9-1, §8A-9-2, §8A-9-3, §8A-9-4, §8A-9-5, §8A-9-6, §8A-9-7, §8A-10-1, §8A-10-2, §8A-10-3, §8A-10-4, §8A-10-5, §8A-11-1, §8A-11-2, §8A-12-1, §8A-12-2, §8A-12-3, §8A-12-4, §8A-12-5, §8A-12-6, §8A-12-7, §8A-12-8, §8A-12-9, §8A-12-10, §8A-12-11, §8A-12-12, §8A-12-13, §8A-12-14, §8A-12-15, §8A-12-16, §8A-12-17, §8A-12-18, §8A-12-19, §8A-12-20 and §8A-12-21, all relating to land-use planning; authorizing planning commissions; setting forth jurisdiction and requirements for various types of planning commissions; requiring comprehensive plans; requiring surveys and studies; establishing mandatory and optional components of plans; establishing processes for adopting and amending plans; authorizing ordinances; establishing process for enacting ordinances; setting forth requirements for contents of ordinances; providing for subdivision or land development ordinances; providing for subdivision or land development plans and plats; establishing processes for approval of minor and major subdivisions; requiring plats to be recorded; setting forth appeal processes; providing for methods of security for construction and

development; establishing vested property rights; providing for enforcement authority; providing for elections on ordinances; providing for variances from ordinances; providing for exemptions from ordinances; authorizing boards of zoning appeals; providing civil and criminal penalties; providing for injunctions; validating prior plans and ordinances; and incorporating special provisions for factory-built homes, group residential facilities and voluntary farmland protection programs.

Be it enacted by the Legislature of West Virginia:

That §8-24-1, §8-24-2, §8-24-3, §8-24-4, §8-24-5, §8-24-6, §8-24-7, §8-24-8, §8-24-9, §8-24-10, §8-24-11, §8-24-12, §8-24-13, §8-24-14, §8-24-15, §8-24-16, §8-24-17, §8-24-18, §8-24-19, §8-24-20, §8-24-21, §8-24-22, §8-24-23, §8-24-24, §8-24-25, §8-24-26, §8-24-27, §8-24-28, §8-24-29, §8-24-30, §8-24-31, §8-24-32, §8-24-33, §8-24-34, §8-24-35, §8-24-36, §8-24-37, §8-24-38, §8-24-39, §8-24-40, §8-24-41, §8-24-42, §8-24-43, §8-24-44, §8-24-45, §8-24-46, §8-24-47, §8-24-48, §8-24-49, §8-24-50, §8-24-50a, §8-24-50b, §8-24-51, §8-24-52, §8-24-53, §8-24-54, §8-24-55, §8-24-56, §8-24-57, §8-24-58, §8-24-59, §8-24-60, §8-24-61, §8-24-62, §8-24-63, §8-24-64, §8-24-65, §8-24-66, §8-24-67, §8-24-68, §8-24-69, §8-24-70, §8-24-71, §8-24-72, §8-24-73, §8-24-73a, §8-24-73b, §8-24-73c, §8-24-73d, §8-24-74, §8-24-74a, §8-24-74b, §8-24-74c, §8-24-75, §8-24-76, §8-24-77, §8-24-78, §8-24-79, §8-24-80, §8-24-81, §8-24-82, §8-24-83, §8-24-84 and §8-24-85 of the code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated §8A-1-1, §8A-1-2, §8A-2-1, §8A-2-2, §8A-2-3, §8A-2-4, §8A-2-5, §8A-2-6, §8A-2-7, §8A-2-8, §8A-2-9, §8A-2-10, §8A-2-11, §8A-3-1, §8A-3-2, §8A-3-3, §8A-3-4, §8A-3-5, §8A-3-6, §8A-3-7, §8A-3-8, §8A-3-9, §8A-3-10, §8A-3-11, §8A-3-12, §8A-3-13, §8A-3-14, §8A-4-1, §8A-4-2, §8A-4-3, §8A-4-4, §8A-4-5, §8A-4-6, §8A-4-7, §8A-5-1, §8A-5-2, §8A-5-3, §8A-5-4, §8A-5-5, §8A-5-6, §8A-5-7, §8A-5-8, §8A-5-9, §8A-5-10, §8A-5-11, §8A-5-12, §8A-6-1, §8A-6-2, §8A-6-3, §8A-7-1, §8A-7-2, §8A-7-3, §8A-7-4, §8A-7-5, §8A-7-6, §8A-7-7, §8A-7-8, §8A-7-9, §8A-7-10, §8A-7-11, §8A-7-12,

§8A-7-13, §8A-8-1, §8A-8-2, §8A-8-3, §8A-8-4, §8A-8-5, §8A-8-6, §8A-8-7, §8A-8-8, §8A-8-9, §8A-8-10, §8A-8-11, §8A-8-12, §8A-9-1, §8A-9-2, §8A-9-3, §8A-9-4, §8A-9-5, §8A-9-6, §8A-9-7, §8A-10-1, §8A-10-2, §8A-10-3, §8A-10-4, §8A-10-5, §8A-11-1, §8A-11-2, §8A-12-1, §8A-12-2, §8A-12-3, §8A-12-4, §8A-12-5, §8A-12-6, §8A-12-7, §8A-12-8, §8A-12-9, §8A-12-10, §8A-12-11, §8A-12-12, §8A-12-13, §8A-12-14, §8A-12-15, §8A-12-16, §8A-12-17, §8A-12-18, §8A-12-19, §8A-12-20 and §8A-12-21, all to read as follows:

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 1. GENERAL PROVISIONS.

§8A-1-1. Legislative findings.

1 (a) The Legislature finds, as the object of this chapter,
2 the following:

3 (1) That planning land development and land use is
4 vitally important to a community;

5 (2) A planning commission is helpful to a community to
6 plan for land development, land use and the future;

7 (3) A plan and a vision for the future is important when
8 deciding uses for and development of land;

9 (4) That sprawl is not advantageous to a community;

10 (5) A comprehensive plan is a guide to a community's
11 goals and objectives and a way to meet those goals and
12 objectives;

13 (6) That the needs of agriculture, residential areas,
14 industry and business be recognized in future growth;

15 (7) That the growth of the community is commensurate
16 with and promotive of the efficient and economical use of
17 public funds;

18 (8) Promoting growth that is economically sound,
19 environmentally friendly and supportive of community

20 livability to enhance quality of life is a good objective for
21 a governing body; and

22 (9) Governing bodies of municipalities and counties need
23 flexibility when authorizing land development and use.

24 (b) Therefore, the Legislature encourages and recom-
25 mends the following:

26 (1) The goal of a governing body should be to have a plan
27 and a vision for the future, and an agency to oversee it;

28 (2) A governing body should have a planning commis-
29 sion, to serve in an advisory capacity to the governing
30 body, and promote the orderly development of its commu-
31 nity;

32 (3) A comprehensive plan should be the basis for land
33 development and use, and be reviewed and updated on a
34 regular basis;

35 (4) A goal of a governing body should be to reduce
36 sprawl;

37 (5) That planning commissions prepare a comprehensive
38 plan and governing bodies adopt the comprehensive plans;

39 (6) Governing bodies, units of government and planning
40 commissions work together to provide for a better commu-
41 nity;

42 (7) Governing bodies may have certain regulatory
43 powers over developments affecting the public welfare;
44 and

45 (8) Based upon a comprehensive plan, governing bodies
46 may:

47 (A) Enact a subdivision and land development ordinance;

48 (B) Require plans and plats for land development;

49 (C) Issue improvement location permits for construction;
50 and

51 (D) Enact a zoning ordinance.

§8A-1-2. Definitions.

1 As used in this chapter, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) "Abandonment" means the relinquishment of prop-
5 erty or a cessation of the use of the property by the owner
6 or lessee without any intention of transferring rights to the
7 property to another owner or of resuming the
8 nonconforming use of the property for a period of one
9 year.

10 (b) "Aggrieved" or "aggrieved person" means a person
11 who:

12 (1) Is denied by the planning commission, board of
13 subdivision and land development appeals, or the board of
14 zoning appeals, in whole or in part, the relief sought in any
15 application or appeal; or

16 (2) Has demonstrated that he or she will suffer a peculiar
17 injury, prejudice or inconvenience beyond that which
18 other residents of the county or municipality may suffer.

19 (c) "Comprehensive plan" means a plan for physical
20 development, including land use, adopted by a governing
21 body, setting forth guidelines, goals and objectives for all
22 activities that affect growth and development in the
23 governing body's jurisdiction.

24 (d) "Conditional use" means a use which because of
25 special requirements or characteristics may be permitted
26 in a particular zoning district only after review by the
27 board of zoning appeals and upon issuance of a condi-
28 tional use permit, and subject to the limitations and
29 conditions specified in the zoning ordinance.

30 (e) "Contiguous" means lots, parcels, municipal bound-
31 aries or county boundaries that are next to, abutting and

32 having a boundary, or portion thereof, that is coterminous.
33 Streets, highways, roads or other traffic or utility ease-
34 ments, streams, rivers, and other natural topography are
35 not to be used to determine lots, parcels, municipal
36 boundaries or county boundaries as contiguous.

37 (f) "Essential utilities and equipment" means under-
38 ground or overhead electrical, gas, communications not
39 regulated by the federal communications commission,
40 water and sewage systems, including pole structures,
41 towers, wires, lines, mains, drains, sewers, conduits,
42 cables, fire alarm boxes, public telephone structures,
43 police call boxes, traffic signals, hydrants, regulating and
44 measuring devices and the structures in which they are
45 housed, and other similar equipment accessories in
46 connection therewith. Essential utility equipment is
47 recognized in three categories:

48 (1) Local serving;

49 (2) Nonlocal or transmission through the county or
50 municipality; and

51 (3) Water and sewer systems, the activities of which are
52 regulated, in whole or in part, by one or more of the
53 following state agencies:

54 (A) Public service commission;

55 (B) Department of environmental protection; or

56 (C) The department of health and human resources.

57 (g) "Existing use" means use of land, buildings or
58 activity permitted or in existence prior to the adoption of
59 a zoning map or ordinances by the county or municipality.
60 If the use is nonconforming to local ordinance and lawfully
61 existed prior to the adoption of the ordinance, the use may
62 continue to exist as a nonconforming use until abandoned
63 for a period of one year: *Provided*, That in the case of
64 natural resources, the absence of natural resources extrac-
65 tion or harvesting is not abandonment of the use.

66 (h) "Exterior architectural features" means the architec-
67 tural character and general composition of the exterior of
68 a structure, including, but not limited to, the kind, color
69 and texture of the building material, and the type, design
70 and character of all windows, doors, massing and rhythm,
71 light fixtures, signs, other appurtenant elements and
72 natural features when they are integral to the significance
73 of the site, all of which are subject to public view from a
74 public street, way or place.

75 (i) "Factory-built homes" means modular and manufac-
76 tured homes.

77 (j) "Flood-prone area" means any land area suscepti-
78 ble to repeated inundation by water from any source.

79 (k) "Governing body" means the body that governs a
80 municipality or county.

81 (l) "Historic district" means a geographically definable
82 area, designated as historic on a national, state or local
83 register, possessing a significant concentration, linkage or
84 continuity of sites, buildings, structures or objects united
85 historically or aesthetically by plan or physical develop-
86 ment.

87 (m) "Historic landmark" means a site, building, struc-
88 ture or object designated as historic on a national, state or
89 local register.

90 (n) "Historic site" means the location of a significant
91 event, a prehistoric or historic occupation or activity, or a
92 building or structure whether standing, ruined or van-
93 ished, where the location itself possesses historical,
94 cultural or archaeological value regardless of the value of
95 any existing structure and designated as historic on a
96 national, state or local register.

97 (o) "Improvement location permit" means a permit
98 issued by a municipality or county, in accordance with its
99 subdivision and land development ordinance, for the

100 construction, erection, installation, placement, rehabilita-
101 tion or renovation of a structure or development of land,
102 and for the purpose of regulating development within
103 flood-prone areas.

104 (p) "Infill development" means to fill in vacant or
105 underused land in existing communities with new develop-
106 ment that blends in with its surroundings.

107 (q) "Land development" means the development of one
108 or more lots, tracts or parcels of land by any means and for
109 any purpose, but does not include easements, rights-of-
110 way or construction of private roads for extraction,
111 harvesting or transporting of natural resources.

112 (r) "Manufactured home" means housing built in a
113 factory according to the federal manufactured home
114 construction and safety standards effective the fifteenth
115 day of June, one thousand nine hundred seventy-six.

116 (s) "Modular home" means housing built in a factory
117 that meets state or local building codes where the homes
118 will be sited.

119 (t) "Non-traditional zoning ordinance" means an
120 ordinance that sets forth development standards and
121 approval processes for land uses within the jurisdiction,
122 but does not necessarily divide the jurisdiction into
123 distinct zoning classifications or districts requiring strict
124 separation of different uses, and does not require a zoning
125 map amendment.

126 (u) "Permitted use" means any use allowed within a
127 zoning district, subject to the restrictions applicable to
128 that zoning district and is not a conditional use.

129 (v) "Plan" means a written description for the develop-
130 ment of land.

131 (w) "Planning commission" means a municipal planning
132 commission, a county planning commission, a multicounty

133 planning commission, a regional planning commission or
134 a joint planning commission.

135 (x) "Plat" means a map of the land development.

136 (y) "Preferred development area" means a geographi-
137 cally defined area where incentives may be used to encour-
138 age development, infill development or redevelopment in
139 order to promote well designed and coordinated communi-
140 ties.

141 (z) "Public place" means any lots, tracts or parcels of
142 land, structures, buildings or parts thereof owned or leased
143 by a governing body or unit of government.

144 (aa) "Sprawl" means poorly planned or uncontrolled
145 growth, usually of a low-density nature, within previously
146 rural areas, that is land consumptive, auto-dependent,
147 designed without respect to its surroundings, and some
148 distance from existing development and infrastructure.

149 (bb) "Streets" means streets, avenues, boulevards,
150 highways, roads, lanes, alleys and all public ways.

151 (cc) "Subdivision or partition" means the division of a
152 lot, tract or parcel of land into two or more lots, tracts or
153 parcels of land, or the recombination of existing lots,
154 tracts, or parcels.

155 (dd) "Unit of government" means any federal, state,
156 regional, county or municipal government or governmental
157 agency.

158 (ee) "Urban area" means all lands or lots within the
159 jurisdiction of a municipal planning commission.

160 (ff) "Utility" means a public or private distribution
161 service to the public that is regulated by the public service
162 commission.

163 (gg) "Zoning" means the division of a municipality or
164 county into districts or zones which specify permitted and

165 conditional uses and development standards for real
166 property within the districts or zones.

167 (hh) "Zoning map" means a map that geographically
168 illustrates all zoning district boundaries within a munici-
169 pality or county, as described within the zoning ordinance,
170 and which is certified as the official zoning map for the
171 municipality or county.

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-1. Planning commissions authorized.

1 (a) A governing body of a municipality or county may, by
2 ordinance, create a planning commission to promote the
3 orderly development of its jurisdiction.

4 (b) Governing bodies may, by ordinance, create a
5 multicounty planning commission, a regional planning
6 commission or a joint planning commission to promote the
7 orderly development of land and reduce duplication of
8 effort.

9 (c) The planning commission shall serve in an advisory
10 capacity to the governing body or governing bodies that
11 created it and have certain regulatory powers over land
12 planning.

13 (d) Governing bodies and planning commissions are
14 authorized to carry out the objectives and overall purposes
15 of this chapter.

16 (e) A planning commission has only those powers, duties
17 and jurisdiction as given to it in the ordinance creating it.

§8A-2-2. Continuation of established planning commissions.

1 (a) A planning commission established prior to the
2 effective date of this chapter shall continue to operate as
3 though established under the terms of this chapter. All
4 actions lawfully taken under prior acts are hereby vali-
5 dated and continued in effect until amended or repealed
6 by action taken under the authority of this chapter.

7 (b) The membership of an existing planning commission
8 shall continue unchanged until the first regular meeting,
9 after the enactment of this chapter, of the governing body
10 that established the planning commission. At that time,
11 any appointments or changes necessary shall be made to
12 bring the membership of the existing planning commission
13 into conformity with the provisions of this chapter.

§8A-2-3. Municipal planning commission.

1 (a) A municipal planning commission shall have not less
2 than five nor more than fifteen members, the exact number
3 to be specified in the ordinance creating the planning
4 commission.

5 (b) The members of a municipal planning commission
6 must be:

7 (1) Residents of the municipality; and

8 (2) Qualified by knowledge and experience in matters
9 pertaining to the development of the municipality.

10 (c) At least three fifths of all of the members must have
11 been residents of the municipality for at least three years
12 prior to nomination or appointment and confirmation.

13 (d) The members of a municipal planning commission
14 must fairly represent different areas of interest, knowledge
15 and expertise, including, but not limited to, business,
16 industry, labor, government and other relevant disciplines.
17 One member must be a member of the municipal governing
18 body or a designee and one member must be a member of
19 the administrative department of the municipality or a
20 designee. The term of membership for these two members
21 is the same as their term of office.

22 (e) The remaining members of the municipal planning
23 commission first selected shall serve respectively for terms
24 of one year, two years and three years, divided equally or
25 as nearly equally as possible between these terms. There-
26 after, members shall serve three-year terms. Vacancies

27 shall be filled for the unexpired term and made in the
28 same manner as original selections were made.

29 (f) The members of a municipal planning commission
30 shall serve without compensation, but shall be reimbursed
31 for all reasonable and necessary expenses actually in-
32 curred in the performance of their official duties.

33 (g) Nominations for municipal planning commission
34 membership shall be made by the administrative authority
35 and confirmed by the governing body when the adminis-
36 trative authority and the governing body are separate, or
37 appointed and confirmed by the governing body where the
38 administrative authority and governing body are the same.

39 (h) An individual may serve as a member of a municipal
40 planning commission, a county planning commission, a
41 multicounty planning commission, a regional planning
42 commission or a joint planning commission, at the same
43 time.

44 (i) The governing body of the municipality may establish
45 procedures for the removal of members of the planning
46 commission for inactivity, neglect of duty or malfeasance.
47 The procedures must contain provisions requiring that the
48 person to be removed be provided with a written statement
49 of the reasons for removal and an opportunity to be heard
50 on the matter.

§8A-2-4. County planning commission.

1 (a) A county planning commission shall have not less
2 than five nor more than fifteen members, the exact number
3 to be specified in the ordinance creating the planning
4 commission.

5 (b) The members of a county planning commission must
6 be:

7 (1) Residents of the county; and

8 (2) Qualified by knowledge and experience in matters
9 pertaining to the development of the county.

10 (c) At least three fifths of all of the members must have
11 been residents of the county for at least three years prior
12 to appointment and confirmation by the county commis-
13 sion.

14 (d) The members of a county planning commission must
15 fairly represent different areas of interest, knowledge and
16 expertise, including, but not limited to, business, industry,
17 labor, farming, government and other relevant disciplines.
18 One member must be a member of the county commission
19 or a designee. The term of membership for this member is
20 the same as the term of office.

21 (e) The remaining members of the county planning
22 commission first selected shall serve respectively for terms
23 of one year, two years and three years, divided equally or
24 as nearly equally as possible between these terms. There-
25 after, members shall serve three-year terms. Vacancies
26 shall be filled for the unexpired term and made in the
27 same manner as original selections were made.

28 (f) The members of a county planning commission shall
29 serve without compensation, but shall be reimbursed for
30 all reasonable and necessary expenses actually incurred in
31 the performance of their official duties.

32 (g) Appointments for county planning commission
33 membership shall be made and confirmed by the county
34 commission.

35 (h) An individual may serve as a member of a municipal
36 planning commission, a county planning commission, a
37 multicounty planning commission, a regional planning
38 commission or a joint planning commission, at the same
39 time.

40 (i) The county commission may establish procedures for
41 the removal of members of the planning commission for
42 inactivity, neglect of duty or malfeasance. The procedures
43 must contain provisions requiring that the person to be
44 removed be provided with a written statement of the

45 reasons for removal and an opportunity to be heard on the
46 matter.

**§8A-2-5. Multicounty planning commission, regional planning
commission or joint planning commission.**

1 (a) A multicounty planning commission, a regional
2 planning commission or a joint planning commission shall
3 have not less than five nor more than fifteen members, the
4 exact number to be specified in the ordinance creating the
5 planning commission.

6 (b) The members of a multicounty planning commission,
7 a regional planning commission or a joint planning
8 commission must be:

9 (1) Residents of the jurisdiction of the multicounty
10 planning commission, regional planning commission or
11 joint planning commission; and

12 (2) Qualified by knowledge and experience in matters
13 pertaining to the development of the jurisdiction.

14 (c) The members of a multicounty planning commission,
15 a regional planning commission or a joint planning
16 commission must equally represent the jurisdictions in the
17 planning commission, and must have been residents of the
18 jurisdiction he or she represents for at least three years
19 prior to appointment and confirmation.

20 (d) The members of a multicounty planning commission,
21 a regional planning commission or a joint planning
22 commission must fairly represent different areas of
23 interest, knowledge and expertise, including, but not
24 limited to, business, industry, labor, farming, government
25 and other relevant disciplines. Each governing body
26 participating in the planning commission must have one
27 member from its governing body on the planning commis-
28 sion. The term of membership for this member is the same
29 as the term of office.

30 (e) The remaining members of the multicounty planning
31 commission, regional planning commission or joint
32 planning commission first selected shall serve respectively

33 for terms of one year, two years and three years, divided
34 equally or as nearly equally as possible between these
35 terms. Thereafter, members shall serve three-year terms.
36 Vacancies shall be filled for the unexpired term and made
37 in the same manner as original selections were made.

38 (f) The members of a multicounty planning commission,
39 a regional planning commission or a joint planning
40 commission shall serve without compensation, but shall be
41 reimbursed for all reasonable and necessary expenses
42 actually incurred in the performance of their official
43 duties.

44 (g) Appointments for a multicounty planning commis-
45 sion, a regional planning commission or a joint planning
46 commission membership shall be made and confirmed by
47 each governing body participating in the planning com-
48 mission.

49 (h) An individual may serve as a member of a municipal
50 planning commission, a county planning commission, a
51 multicounty planning commission, a regional planning
52 commission or a joint planning commission, at the same
53 time.

54 (i) The governing bodies may establish procedures for the
55 removal of members of the planning commission for
56 inactivity, neglect of duty or malfeasance. The procedures
57 must contain provisions requiring that the person to be
58 removed be provided with a written statement of the
59 reasons for removal and an opportunity to be heard on the
60 matter.

§8A-2-6. Sharing planning commissions.

1 (a) The governing body of a municipality located within
2 a county with a planning commission may, by ordinance,
3 designate the county planning commission as the municipi-
4 pal planning commission. A county planning commission
5 designated as a municipal planning commission has all the
6 powers, authority and duties granted under this article to
7 a municipal planning commission.

8 (b) The county commission of a county with a municipal
9 planning commission may, by ordinance, designate the
10 municipal planning commission as the county planning
11 commission. A municipal planning commission designated
12 as a county planning commission has all the powers,
13 authority and duties granted under this article to a county
14 planning commission.

15 (c) If a municipality is located in more than one county,
16 this section only applies to the county where the major
17 portion of the territory of the municipality is located.

18 (d) Municipalities and counties may contract annually
19 with each other to pay expenses for shared planning
20 commissions.

§8A-2-7. Planning commission meetings.

1 (a) A planning commission shall meet at least quarterly
2 and may meet more frequently at the request of the
3 president or by two or more members.

4 (b) Notice for a special meeting must be in writing,
5 include the date, time and place of the special meeting,
6 and be sent to all members at least two days before the
7 special meeting.

8 (c) Written notice of a special meeting is not required if
9 the date, time and place of the special meeting were set in
10 a regular meeting.

§8A-2-8. Quorum.

1 A planning commission must have quorum to conduct a
2 meeting. A majority of the members of a planning com-
3 mission is a quorum. No action of a planning commission
4 is official unless authorized by a majority of the members
5 present at a regular or properly called special meeting.

§8A-2-9. Officers.

1 At its first regular meeting each year, a planning com-
2 mission shall elect from its members a president and vice

3 president. The vice president shall have the power and
4 authority to act as president of the planning commission
5 during the absence or disability of the president.

§8A-2-10. Governing body's duties.

1 (a) The county commission in the case of a county
2 planning commission, and the governing body of the
3 municipality in the case of a municipal planning commis-
4 sion, shall provide the planning commission with:

5 (1) Suitable offices for the holding of meetings and the
6 preservation of plans, maps, documents and accounts; and

7 (2) Appropriate money to defray the reasonable expenses
8 of the planning commission.

9 (b) In the ordinance creating a multicounty planning
10 commission, a regional planning commission or a joint
11 planning commission, the governing bodies shall designate
12 office space and will each equally appropriate money
13 sufficient to defray the reasonable expenses of the plan-
14 ning commission.

15 (c) Planning commissions are authorized to accept gifts,
16 funds and donations which will be deposited with the
17 appropriate governing body in a special nonreverting
18 planning commission fund to be available for expenditures
19 by the planning commission for the purpose designated by
20 the donor.

§8A-2-11. Planning commission's powers and duties.

1 A planning commission has the following powers and
2 duties:

3 (1) Exercise general supervision for the administration
4 of the affairs of the commission;

5 (2) Prescribe rules and regulations pertaining to admin-
6 istration, investigations and hearings: *Provided*, That the
7 rules and regulations are adopted by the governing body;

- 8 (3) Supervise the fiscal affairs and responsibilities of the
9 commission;
- 10 (4) With consent from the governing body, hire employ-
11 ees necessary to carry out the duties and responsibilities of
12 the planning commission: *Provided*, That the governing
13 body sets the salaries;
- 14 (5) Keep an accurate and complete record of all planning
15 commission proceedings;
- 16 (6) Record and file all bonds and contracts;
- 17 (7) Take responsibility for the custody and preservation
18 of all papers and documents of the planning commission;
- 19 (8) Make recommendations to the appropriate governing
20 body concerning planning;
- 21 (9) Make an annual report to the appropriate governing
22 body concerning the operation of the planning commission
23 and the status of planning within its jurisdiction;
- 24 (10) Prepare, publish and distribute reports, ordinances
25 and other material relating to the activities authorized
26 under this article;
- 27 (11) Adopt a seal, and certify all official acts;
- 28 (12) Invoke any legal, equitable or special remedy for the
29 enforcement of the provisions of this article or any ordi-
30 nance, rule and regulation or any action taken thereunder;
- 31 (13) Prepare and submit an annual budget to the appro-
32 priate governing body;
- 33 (14) If necessary, establish advisory committees;
- 34 (15) Delegate limited powers to a committee composed
35 of one or more members of the commission; and
- 36 (16) Contract for special or temporary services and
37 professional counsel with the approval of the governing
38 body. Upon request, a county prosecuting attorney, the

39 county surveyor, the county engineer, or any other county
40 employee may render assistance and service to a planning
41 commission without compensation.

ARTICLE 3. COMPREHENSIVE PLAN.

§8A-3-1. Purpose and goals of a comprehensive plan.

1 (a) The general purpose of a comprehensive plan is to
2 guide a governing body to accomplish a coordinated and
3 compatible development of land and improvements within
4 its territorial jurisdiction, in accordance with present and
5 future needs and resources.

6 (b) A comprehensive plan is a process through which
7 citizen participation and thorough analysis are used to
8 develop a set of strategies that establish as clearly and
9 practically as possible the best and most appropriate
10 future development of the area under the jurisdiction of
11 the planning commission. A comprehensive plan aids the
12 planning commission in designing and recommending to
13 the governing body ordinances that result in preserving
14 and enhancing the unique quality of life and culture in
15 that community and in adapting to future changes of use
16 of an economic, physical or social nature. A comprehensive
17 plan guides the planning commission in the performance
18 of its duties to help achieve sound planning.

19 (c) A comprehensive plan must promote the health,
20 safety, morals, order, convenience, prosperity and general
21 welfare of the inhabitants, as well as efficiency and
22 economy in the process of development.

23 (d) The purpose of a comprehensive plan is to:

24 (1) Set goals and objectives for land development, uses
25 and suitability for a governing body, so a governing body
26 can make an informed decision;

27 (2) Ensure that the elements in the comprehensive plan
28 are consistent;

29 (3) Coordinate all governing bodies, units of government
30 and other planning commissions to ensure that all compre-
31 hensive plans and future development are compatible;

32 (4) Create conditions favorable to health, safety, mobil-
33 ity, transportation, prosperity, civic activities, recre-
34 ational, educational, cultural opportunities and historic
35 resources;

36 (5) Reduce the wastes of physical, financial, natural or
37 human resources which result from haphazard develop-
38 ment, congestion or scattering of population;

39 (6) Reduce the destruction or demolition of historic sites
40 and other resources by reusing land and buildings and
41 revitalizing areas;

42 (7) Promote a sense of community, character and iden-
43 tity;

44 (8) Promote the efficient utilization of natural resources,
45 rural land, agricultural land and scenic areas;

46 (9) Focus development in existing developed areas and
47 fill in vacant or underused land near existing developed
48 areas to create well designed and coordinated communi-
49 ties; and

50 (10) Promote cost-effective development of community
51 facilities and services.

52 (e) A comprehensive plan may provide for innovative
53 land use management techniques, including:

54 (1) Density bonuses and/or density transfer;

55 (2) Clustering;

56 (3) Design guidelines, including planned unit develop-
57 ments;

58 (4) Conservation easements;

59 (5) Infill development;

60 (6) Consolidation of services; and

61 (7) Any other innovative land use technique that will
62 promote the governing body's development plans.

§8A-3-2. Study guidelines for a comprehensive plan.

1 (a) When preparing or amending a comprehensive plan,
2 a planning commission shall make comprehensive surveys
3 and studies of the existing conditions and services and
4 probable future changes of such conditions and services
5 within the territory under its jurisdiction.

6 (b) The comprehensive surveys and studies may cover
7 such factors as population density, health, general welfare,
8 historic sites, mobility, transportation, food supply,
9 education, water and sanitation requirements, public
10 services, accessibility for the disabled and future potential
11 for residential, commercial, industrial or public use.

12 (c) The major objective of the planning process is provid-
13 ing information to and coordination among divergent
14 elements in the municipality or county. The elements in
15 the comprehensive plan shall be consistent and governing
16 bodies, units of government and planning commissions
17 must work together to ensure that comprehensive plans
18 and future development are compatible.

§8A-3-3. Authority for planning commission.

1 (a) A planning commission shall prepare a comprehen-
2 sive plan for the development of land within its jurisdic-
3 tion. A planning commission shall then recommend the
4 comprehensive plan to the appropriate governing body for
5 adoption.

6 (b) A county, multicounty, regional or joint comprehen-
7 sive plan may include the planning of towns, villages or
8 municipalities to the extent to which, in the planning
9 commission's judgment, they are related to the planning of
10 the unincorporated territory of the county as a whole:
11 *Provided*, That the comprehensive plan shall not be

12 considered a comprehensive plan for any town, village or
13 municipality without the consent of the planning commis-
14 sion and/or the governing body of the town, village or
15 municipality.

16 (c) A comprehensive plan should be coordinated with the
17 plans of the department of transportation, insofar as it
18 relates to highways, thoroughfares, trails and pedestrian
19 ways under the jurisdiction of that planning commission.

20 (d) A county planning commission may prepare a
21 comprehensive plan for either the entire county or a part
22 of the county.

23 (e) A multicounty, regional or joint planning commission
24 may prepare a comprehensive plan for land within its
25 jurisdiction.

§8A-3-4. Mandatory components of a comprehensive plan.

1 (a) The comprehensive plan is a written statement on
2 present and future land use and development patterns
3 consisting of descriptive materials, including text, graph-
4 ics and maps, covering the objectives, principles and
5 guidelines for the orderly and balanced present and future
6 economic, social, physical, environmental and fiscal
7 development of the area under the jurisdiction of the
8 planning commission.

9 (b) A comprehensive plan shall meet the following
10 objectives:

11 (1) A statement of goals and objectives for a governing
12 body, concerning its present and future land development;

13 (2) A timeline on how to meet short and long-range goals
14 and objectives;

15 (3) An action plan setting forth implementation strate-
16 gies;

17 (4) Recommend to the governing body a financial
18 program for goals and objectives that need public financ-
19 ing;

20 (5) A statement of recommendations concerning future
21 land use and development policies that are consistent with
22 the goals and objectives set forth in the comprehensive
23 plan;

24 (6) A program to encourage regional planning, coordina-
25 tion and cooperation with other governing bodies, units of
26 government and planning commissions; and

27 (7) Maps, plats, charts and/or descriptive material
28 presenting basic information on the land included in the
29 comprehensive plan, including present and future uses.

30 (c) The comprehensive plan shall have, but is not limited
31 to, the following components:

32 (1) *Land use.* — Designate the current, and set goals and
33 programs for the proposed general distribution, location
34 and suitable uses of land, including, but not limited to:

35 (A) Residential, commercial, industrial, agricultural,
36 recreational, educational, public, historic, conservation,
37 transportation, infrastructure or any other use of land;

38 (B) Population density and building intensity standards;

39 (C) Growth and/or decline management;

40 (D) Projected population growth or decline; and

41 (E) Constraints to development, including identifying
42 flood-prone and subsidence areas.

43 (2) *Housing.* — Set goals, plans and programs to meet the
44 housing needs for current and anticipated future residents
45 of the jurisdiction, including, but not limited to:

46 (A) Analyzing projected housing needs and the different
47 types of housing needed, including affordable housing and
48 universally designed housing accessible to persons with
49 disabilities;

50 (B) Identifying the number of projected necessary
51 housing units and sufficient land needed for all housing
52 needs;

53 (C) Addressing substandard housing;

54 (D) Rehabilitating and improving existing housing; and

55 (E) Adaptive reuse of buildings into housing.

56 (3) *Transportation*. – Consistent with the land use
57 component, identify the type, location, programs, goals
58 and plans to meet the intermodal transportation needs of
59 the jurisdiction, including, but not limited to:

60 (A) Vehicular, transit, air, port, railroad, river and any
61 other mode of transportation system;

62 (B) Movement of traffic and parking;

63 (C) Pedestrian and bicycle systems; and

64 (D) Intermodal transportation.

65 (4) *Infrastructure*. – Designate the current, and set
66 goals, plans and programs, for the proposed locations,
67 capabilities and capacities of all utilities, essential utilities
68 and equipment, infrastructure and facilities to meet the
69 needs of current and anticipated future residents of the
70 jurisdiction.

71 (5) *Public services*. – Set goals, plans and programs, to
72 ensure public safety, and meet the medical, cultural,
73 historical, community, social, educational and disaster
74 needs of the current and anticipated future residents of the
75 jurisdiction.

76 (6) *Rural*. – Consistent with the land use component,
77 identify land that is not intended for urban growth and set
78 goals, plans and programs for growth and/or decline
79 management in the designated rural area.

80 (7) *Recreation*. — Consistent with the land use compo-
81 nent, identify land, and set goals, plans and programs for
82 recreational and tourism use in the area.

83 (8) *Economic development*. — Establish goals, policies,
84 objectives, provisions and guidelines for economic growth
85 and vitality for current and anticipated future residents of
86 the jurisdiction, including, but not limited to:

87 (A) Opportunities, strengths and weaknesses of the local
88 economy and workforce;

89 (B) Identifying and designating economic development
90 sites and/or sectors for the area; and

91 (C) Type of economic development sought, correlated to
92 the present and projected employment needs and utiliza-
93 tion of residents in the area.

94 (9) *Community design*. — Consistent with the land use
95 component, set goals, plans and programs to promote a
96 sense of community, character and identity.

97 (10) *Preferred development areas*. — Consistent with the
98 land use component, identify areas where incentives may
99 be used to encourage development, infill development or
100 redevelopment in order to promote well designed and
101 coordinated communities and prevent sprawl.

102 (11) *Renewal and/or redevelopment*. — Consistent with
103 the land use component, identify slums and other blighted
104 areas and set goals, plans and programs for the elimination
105 of such slums and blighted areas and for community
106 renewal, revitalization and/or redevelopment.

107 (12) *Financing*. — Recommend to the governing body
108 short and long-term financing plans to meet the goals,
109 objectives and components of the comprehensive plan.

110 (13) *Historic preservation*. — Identify historical, scenic,
111 archaeological, architectural or similar significant lands or
112 buildings, and specify preservation plans and programs so

113 as not to unnecessarily destroy the past development
114 which may make a viable and affordable contribution in
115 the future.

§8A-3-5. Optional components of a comprehensive plan.

1 The comprehensive plan may have, but is not limited to,
2 the following components:

3 (1) *History*. – An analysis of the history of the area to
4 better provide for the future.

5 (2) *Environmental*. – Recommend programs where
6 appropriate to appropriate regulatory agencies to protect
7 the area from all types of pollution and promote a healthy
8 environment.

9 (3) *Tourism*. – Recommend programs to promotetourism
10 and cultural and heritage development in the area.

11 (4) *Conservation*. – Recommend programs to conserve
12 and protect wildlife, natural habitats, sensitive natural
13 areas, green spaces and direct access to sunlight.

14 (5) *Safety*. – Recommend public safety programs to
15 educate and protect the public from disasters, both natural
16 and man-made.

17 (6) *Natural resources use*. – Identify areas for natural
18 resources use in an urban area.

**§8A-3-6. Notice and public participation requirement for a
comprehensive plan.**

1 (a) Prior to recommending a new or amended compre-
2 hensive plan to a governing body for adoption, the plan-
3 ning commission shall give notice and hold a public
4 hearing on the new or amended comprehensive plan.

5 (b) At least thirty days prior to the date set for the public
6 hearing, the planning commission shall publish a notice of
7 the date, time and place of the public hearing as a Class I
8 legal advertisement in compliance with the provisions of

9 article three, chapter fifty-nine of this code. The publica-
10 tion area shall be the area covered by the comprehensive
11 plan.

12 (c) A planning commission shall include public partici-
13 pation throughout the process of studying and preparing
14 a comprehensive plan and amending a comprehensive
15 plan. A planning commission shall adopt procedures for
16 public participation throughout the process of studying
17 and preparing or amending a comprehensive plan.

18 (d) A planning commission shall request input from
19 other affected governing bodies and units of government.

§8A-3-7. Submission of comprehensive plan.

1 (a) After the comprehensive plan is prepared and before
2 it is approved, the planning commission shall hold a public
3 hearing. After the public hearing and approval, the
4 planning commission shall submit the recommended
5 comprehensive plan to the applicable governing body for
6 consideration and adoption.

7 (b) At the first meeting of the applicable governing body
8 following the submission of the recommended comprehen-
9 sive plan by the planning commission to the governing
10 body, the planning commission shall present the recom-
11 mended comprehensive plan to the governing body.

12 (c) After the presentation of the recommended compre-
13 hensive plan by the planning commission to the governing
14 body and prior to adoption, the governing body shall hold
15 a public hearing after giving notice.

16 (d) At least fifteen days prior to the date set for the
17 public hearing, the planning commission shall publish a
18 notice of the date, time and place of the public hearing as
19 a Class I legal advertisement in compliance with the
20 provisions of article three, chapter fifty-nine of this code.
21 The publication area shall be the area covered by the
22 comprehensive plan.

§8A-3-8. Adoption of comprehensive plan by governing body.

1 (a) Within the latter of ninety days or three scheduled
2 meetings after the submission of the recommended com-
3 prehensive plan to the governing body, the governing body
4 must act by either adopting, rejecting or amending the
5 comprehensive plan.

6 (b) If the comprehensive plan is adopted by the govern-
7 ing body, then the governing body may adopt the compre-
8 hensive plan as an ordinance or designate what other
9 effect the comprehensive plan may have.

10 (c) If the comprehensive plan is adopted by the governing
11 body and an ordinance is published, the comprehensive
12 plan may be incorporated by reference in the ordinance
13 and the full text of the comprehensive plan does not have
14 to be published.

§8A-3-9. Filing the comprehensive plan.

1 After the adoption of a comprehensive plan by a govern-
2 ing body, the governing body must file the adopted
3 comprehensive plan in the office of the clerk of the county
4 commission where the comprehensive plan applies. If an
5 adopted comprehensive plan covers more than one county,
6 a certified copy of the adopted comprehensive plan must
7 be filed in the office of the clerk of the county commission
8 of each county covered by the adopted comprehensive
9 plan.

§8A-3-10. Rejection or amendment of comprehensive plan by governing body.

1 (a) If a governing body rejects or amends the recom-
2 mended comprehensive plan, then the comprehensive plan
3 must be returned to the planning commission for its
4 consideration, with a written statement of the reasons for
5 the rejection or amendment.

6 (b) The planning commission has forty-five days to
7 consider the rejection or amendment and make recommen-
8 dations to the governing body.

9 (c) If the planning commission approves the amendment
10 to the comprehensive plan, then the comprehensive plan
11 shall stand as adopted by the governing body.

12 (d) If the planning commission disapproves of the
13 rejection or amendment, then the planning commission
14 shall state its reasons in its written recommendations to
15 the governing body.

16 (e) Within forty-five days of receipt of the planning
17 commission's written recommendations for disapproval,
18 the governing body must act on the comprehensive plan.

19 (f) If the planning commission does not file a written
20 recommendation with the governing body within forty-
21 five days, then the action in rejecting or amending the
22 comprehensive plan is final.

§8A-3-11. Amending comprehensive plan after adoption.

1 (a) After the adoption of a comprehensive plan by the
2 governing body, the planning commission shall follow the
3 comprehensive plan, and review the comprehensive plan
4 and make updates at least every ten years.

5 (b) After the adoption of a comprehensive plan by the
6 governing body, all amendments to the comprehensive
7 plan shall be made by the planning commission and
8 recommended to the governing body for adoption in
9 accordance with the procedures set forth in sections six,
10 seven, eight and nine of this article. The planning commis-
11 sion shall hold a public hearing prior to its recommenda-
12 tion to the governing body.

13 (c) If a governing body wants an amendment, it may
14 request in writing for the planning commission to prepare
15 an amendment. The planning commission must hold a
16 public hearing within one hundred twenty days after the
17 written request by the governing body to the planning
18 commission is received.

19 (d) Within the latter of ninety days or three scheduled
20 meetings after the submission of the recommended amend-
21 ment to the comprehensive plan to the governing body, the
22 governing body must act by either adopting, rejecting or
23 amending the comprehensive plan.

§8A-3-12. Validation of prior comprehensive plans.

1 (a) The adoption of a comprehensive plan or any general
2 development plans by a planning commission, under the
3 authority of prior acts, is hereby validated and the plans
4 may continue in effect for ten years after the effective date
5 of this chapter or until the plans are revised, amended or
6 replaced in accordance with this chapter.

7 (b) After the effective date of this chapter, amendments
8 to prior plans shall be made in accordance with the
9 provisions of this article.

§8A-3-13. Intergovernmental cooperation.

1 (a) With a view to coordinating and integrating the
2 planning of municipalities and/or counties with each
3 other, all governing bodies and units of government within
4 the lands under the jurisdiction of the planning commis-
5 sion preparing or amending a comprehensive plan, all
6 governing bodies and units of government affected by the
7 comprehensive plan, and any other interested or affected
8 governing body, unit of government or planning commis-
9 sion, must cooperate, participate, share information and
10 give input when a planning commission prepares or
11 amends a comprehensive plan.

12 (b) All planning commissions, governing bodies and units
13 of government are authorized to cooperate and share
14 information with each other and may adopt rules and
15 regulations to coordinate and integrate planning.

16 (c) All planning commissions, governing bodies and units
17 of government must make available, upon the request of a
18 planning commission, any information, maps, documents,

19 data and plans pertinent to the preparation of a compre-
20 hensive plan.

§8A-3-14. Jurisdiction of municipal planning commission.

1 The jurisdiction of a municipal planning commission
2 shall not extend beyond the corporate limits of the munici-
3 pality.

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-1. Subdivision and land development ordinances authorized.

1 (a) The governing body of a municipality or a county
2 may regulate subdivisions and land development within its
3 jurisdiction by:

4 (1) Adopting a comprehensive plan; and

5 (2) Enacting a subdivision and land development ordi-
6 nance.

7 (b) A municipality may adopt, by reference, the subdivi-
8 sion and land development ordinance of the county in
9 which it is located.

10 (c) With the prior approval of the county planning
11 commission, a municipality may, by ordinance, designate
12 the county planning commission as the planning commis-
13 sion for the municipality to review and approve subdivi-
14 sion or land development plans and plats.

§8A-4-2. Contents of subdivision and land development ordinance.

1 (a) A subdivision and land development ordinance shall
2 include the following provisions:

3 (1) A minor subdivision or land development process,
4 including criteria, requirements and a definition of minor
5 subdivision;

6 (2) The authority of the planning commission and its
7 staff to approve a minor subdivision or land development;

8 (3) A major subdivision or land development process,
9 including criteria and requirements;

10 (4) The authority of the planning commission to approve
11 a major subdivision or land development;

12 (5) The standards for setback requirements, lot sizes,
13 streets, sidewalks, walkways, parking, easements, rights-
14 of-way, drainage, utilities, infrastructure, curbs, gutters,
15 street lights, fire hydrants, storm water management and
16 water and wastewater facilities;

17 (6) Standards for flood-prone or subsidence areas;

18 (7) A review process for subdivision or land development
19 plans and plats by the planning commission;

20 (8) An approval process for subdivision or land develop-
21 ment plans and plats by the planning commission, includ-
22 ing the authority to approve subdivision or land develop-
23 ment plans and plats with conditions;

24 (9) A process to amend final approved subdivision or
25 land development plans and plats;

26 (10) A requirement that before development of the land
27 is commenced, subdivision and land development plans
28 and plats must be approved by the applicable planning
29 commission, in accordance with the comprehensive plan;

30 (11) A requirement that after approval of the subdivision
31 or land development plat by the planning commission and
32 before the subdivision or development of the land is
33 commenced, the subdivision and land development plat
34 shall be recorded in the office of the clerk of the county
35 commission where a majority of the land to be developed
36 lies;

37 (12) A schedule of fees to be charged which are propor-
38 tioned to the cost of checking and verifying proposed plats;

39 (13) The process for granting waivers from the minimum
40 standards of the subdivision and land development
41 ordinance;

42 (14) Improvement location permit process, including a
43 requirement that a structure or development of land is
44 prohibited without an improvement location permit;

45 (15) The acceptable methods of payment to cover the cost
46 of the water and sewer service infrastructure, which can
47 include, but are not limited to, bonds, impact fees, escrow
48 fees and proffers;

49 (16) The process for cooperating and coordinating with
50 other governmental agencies affected by the subdivision
51 and land development and use; and

52 (17) Penalties for violating the subdivision and land
53 development ordinance.

54 (b) A subdivision and land development ordinance may
55 include the following provisions:

56 (1) Establishing a board of subdivision and land develop-
57 ment appeals with the same powers, duties and appeals
58 process as set out for the board of zoning appeals under
59 the provisions of article eight of this chapter;

60 (2) Requirements for green space, common areas, public
61 grounds, walking and cycling paths, recreational trails,
62 parks, playgrounds and recreational areas;

63 (3) Encourage the use of renewable energy systems and
64 energy-conserving building design;

65 (4) Vested property right, including requirements;

66 (5) Exemptions of certain types of land development
67 from the subdivision and land development ordinance
68 requirements, including, but not limited to, single-family
69 residential structures and farm structures; and

70 (6) Any other provisions consistent with the comprehen-
71 sive plan the governing body considers necessary.

§8A-4-3. Enactment of subdivision and land development ordinance.

1 (a) Before a governing body enacts a subdivision and
2 land development ordinance, the governing body shall
3 hold at least one public hearing and give public notice.

4 (b) The public notice of the date, time and place of the
5 public hearing must be published in a local newspaper of
6 general circulation in the area as a Class I legal advertise-
7 ment, in accordance with the provisions of article three,
8 chapter fifty-nine of this code, at least thirty days prior to
9 the public hearing. The public notice must contain a brief
10 summary of the principal provisions of the proposed
11 subdivision and land development ordinance and a
12 reference to the place or places where copies of the pro-
13 posed subdivision and land development ordinance may be
14 examined.

15 (c) After the public hearing, if the governing body makes
16 other than technical amendments to the proposed subdivi-
17 sion and land development ordinance prior to voting on it,
18 the governing body shall hold another public hearing and
19 give public notice. The public notice shall be as provided
20 in subsection (b) of this section, and must contain a brief
21 summary of the amendments.

§8A-4-4. Filing the subdivision and land development ordinance.

1 After the enactment of the subdivision and land develop-
2 ment ordinance by a governing body, the governing body
3 must file the enacted subdivision and land development
4 ordinance in the office of the clerk of the county commis-
5 sion where the subdivision and land development ordi-
6 nance applies.

§8A-4-5. Amendments to the subdivision and land development ordinance.

1 After the enactment of the subdivision and land develop-
2 ment ordinance by the governing body, all amendments to

3 the subdivision and land development ordinance shall be
4 made by the governing body after holding a public hearing
5 with public notice.

§8A-4-6. Effect of adopted subdivision and land development ordinance.

1 After enactment of a subdivision and land development
2 ordinance by the governing body, all subsequent subdivi-
3 sions and land development must be done in accordance
4 with the provisions of the subdivision and land develop-
5 ment ordinance.

§8A-4-7. Validation of prior subdivision and land development ordinance.

1 All subdivision and land development ordinances, all
2 amendments, supplements and changes to the ordinance,
3 legally adopted under prior acts, and all action taken
4 under the authority of the ordinance, are hereby validated
5 and the ordinance shall continue in effect until amended
6 or repealed by action of the governing body taken under
7 authority of this article. These ordinances shall have the
8 same effect as though previously adopted as a comprehen-
9 sive plan of land use or parts thereof.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

§8A-5-1. Jurisdiction of planning commissions.

1 (a) A planning commission has the authority to:

2 (1) Approve a minor subdivision or land development
3 application within its jurisdiction;

4 (2) Exempt an application for a minor subdivision or
5 land development within its jurisdiction; and

6 (3) Approve a major subdivision or land development
7 application within its jurisdiction.

8 (b) The staff of a planning commission has the authority
9 to approve a minor subdivision or land development

10 application within its jurisdiction, if granted such author-
11 ity by the governing body in the subdivision and land
12 development ordinance.

13 (c) If a subdivision or land development plan and plat
14 cannot be approved through the minor subdivision or land
15 development process, then an applicant must use the major
16 subdivision or land development approval process.

PART I. MINOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

**§8A-5-2. Requirements for a minor subdivision or land develop-
ment.**

1 (a) An application for approval of a subdivision or land
2 development plan and plat may be considered a minor
3 subdivision or land development if it meets the following
4 requirements:

5 (1) Only creates the maximum number of lots specifically
6 permitted by the subdivision and land development
7 ordinance for a minor subdivision or land development;

8 (2) Will not require the development of new or the
9 extension of existing off-tract infrastructure; and

10 (3) Such other requirements as determined by the
11 governing body to ensure that required improvements are
12 installed and not avoided by a series of minor subdivisions
13 or land developments.

14 (b) The following can be considered a minor subdivision
15 or land development if approved by the planning commis-
16 sion:

17 (1) Merger or consolidation of parcels of land;

18 (2) Land transfers between immediate family members;
19 and

20 (3) Minor boundary line adjustments.

§8A-5-3. Application for minor subdivision or land development.

1 (a) An applicant submits a copy of a land development
2 plat and the fees to the planning commission having
3 jurisdiction over the land.

4 (b) Within seven days after the submission of the subdivi-
5 sion or land development plat, the applicant and the
6 staff of the planning commission shall meet to discuss the
7 proposed subdivision or land development and the criteria
8 used to classify the proposal as minor.

9 (c) The staff of the planning commission may make a site
10 inspection of the proposed subdivision or land develop-
11 ment.

12 (d) Within ten days after the submission of the subdivi-
13 sion or land development plat, the staff of the planning
14 commission shall notify the applicant in writing that the
15 proposed subdivision or land development has been
16 classified a minor subdivision or land development.

§8A-5-4. Approval of minor subdivision or land development plans and plats.

1 (a) Within ten days after a plat has been classified a
2 minor subdivision or land development, then the planning
3 commission or staff, if the authority has been given by the
4 governing body, shall approve or deny the plat.

5 (b) If the planning commission approves the plat, then
6 the planning commission shall affix its seal on the plat.

7 (c) If the planning commission approves the plat with
8 conditions, then the planning commission must state the
9 conditions.

10 (d) If the planning commission denies the plat, then the
11 planning commission shall notify the applicant in writing
12 of the reasons for the denial.

§8A-5-5. Recording of minor subdivision or land development plat.

1 After approval of a minor subdivision or land develop-
2 ment plat by the planning commission and before the
3 subdivision or development is commenced, the subdivision
4 or land development plat shall be recorded by the appli-
5 cant in the office of the clerk of the county commission
6 where the land is located.

PART II. MAJOR SUBDIVISION OR
LAND DEVELOPMENT PROCESS.

**§8A-5-6. Application for major subdivision or land develop-
ment.**

1 (a) An applicant for approval of a major subdivision or
2 land development plan and plat shall submit written
3 application, a copy of the proposed land development plan
4 and plat, and the fees to the planning commission having
5 jurisdiction over the land.

6 (b) Within forty-five days after receipt of the applica-
7 tion, the planning commission shall review the application
8 for completeness and either accept or deny it.

9 (c) If the application is not complete, then the planning
10 commission may deny the application and must notify the
11 applicant in writing stating the reasons for the denial.

**§8A-5-7. Contents of a major subdivision or land development
plan and plat.**

1 (a) A land development plan and plat must include
2 everything required by the governing body's subdivision
3 and land development ordinance.

4 (b) If a governing body does not have a subdivision and
5 land development ordinance or if a governing body's
6 subdivision and land development ordinance does not
7 specify what may be included in a subdivision or land
8 development plan and plat, then the following may be

9 included, when applicable, in a subdivision or land
10 development plan and plat:

11 (1) Show that the subdivision or land development
12 conforms to the governing body's comprehensive plan;

13 (2) A method of payment to cover the cost of the water
14 and sewer service infrastructure, which can include, but is
15 not limited to, bonds, impact fees, escrow fees and prof-
16 fers;

17 (3) Coordination among land development with adjoin-
18 ing land owners, including, but not limited to, facilities
19 and streets;

20 (4) Distribution of population and traffic in a manner
21 tending to create conditions favorable to health, safety,
22 convenience and the harmonious development of the
23 municipality or county;

24 (5) Show that there is a fair allocation of areas for
25 different uses, including but not limited to, streets, parks,
26 schools, public and private buildings, utilities, businesses
27 and industry;

28 (6) Show that there is a water and sewer supply;

29 (7) Setback and lot size measures were used;

30 (8) The standards used for designating land which is
31 subject to flooding or subsidence, details for making it
32 safe, or information showing that such land will be set
33 aside for use which will not endanger life or property and
34 will not further aggravate or increase the existing menace;

35 (9) The control measures for drainage, erosion and
36 sediment;

37 (10) The coordination of streets, sidewalks and pedes-
38 trian pathways in and bordering the land development;
39 and

40 (11) The design, construction and improvement measures
41 to be used for the streets, sidewalks, easements, rights-of-

42 way, drainage, utilities, walkways, curbs, gutters, street
43 lights, fire hydrants, water and wastewater facilities, and
44 other improvements installed, including the width, grade
45 and location for the purpose of accommodating prospec-
46 tive traffic, customers and facilitating fire protection.

§8A-5-8. Approval of major subdivision or land development plans and plats.

1 (a) Upon written request of the applicant for a determi-
2 nation, the planning commission must determine by vote
3 at the next regular meeting or at a special meeting,
4 whether or not the application is complete based upon a
5 finding that the application meets the requirements set
6 forth in its governing body's subdivision and land develop-
7 ment ordinance.

8 (b) If a governing body's subdivision and land develop-
9 ment ordinance does not specify what may be included in
10 a land development plan and plat, then the planning
11 commission must determine that an application is com-
12 plete if the application meets the requirements set forth in
13 subsection (b), section seven of this article.

14 (c) At a meeting where the application is determined to
15 be complete, the planning commission must set a date,
16 time and place for a public hearing and a meeting to
17 follow the public hearing to vote on the application. The
18 public hearing must be held within forty-five days, and the
19 planning commission must notify the applicant of the
20 public hearing and meeting in writing unless notice is
21 waived in writing by the applicant. The planning commis-
22 sion must publish a public notice of the public hearing and
23 meeting in a local newspaper of general circulation in the
24 area at least twenty-one days prior to the public hearing.

25 (d) At a meeting at the conclusion of the public hearing
26 or a meeting held within fourteen days after the public
27 hearing, the planning commission shall vote to approve,
28 deny or hold the application.

29 (e) The application may be held for additional informa-
30 tion necessary to make a determination. An application
31 may be held for up to forty-five days.

32 (f) The planning commission shall approve the applica-
33 tion after the planning commission determines that an
34 application is complete and meets the requirements of the
35 governing body's subdivision and land development
36 ordinance; or if the governing body does not have a
37 subdivision and land development ordinance or if the
38 subdivision and land development ordinance does not
39 specify what may be included in a subdivision or land
40 development plan and plat, that the application meets the
41 requirements set forth in subsection (b) section seven of
42 this article.

43 (g) If the planning commission approves the application,
44 then the planning commission shall affix its seal on the
45 subdivision or land development plan and/or plat.

46 (h) If the planning commission approves the application
47 with conditions, then the planning commission must
48 specify those conditions.

49 (i) If the planning commission denies the application,
50 then the planning commission shall notify the applicant in
51 writing of the reasons for the denial. The applicant may
52 request, one time, a reconsideration of the decision of the
53 planning commission, which request for reconsideration
54 must be in writing and received by the planning commis-
55 sion no later than ten days after the decision of the plan-
56 ning commission is received by the applicant.

**§8A-5-9. Recording of major subdivision or land development
plat.**

1 After approval of a major subdivision or land develop-
2 ment plat by the planning commission and after the
3 conditions of the planning commission are met, the
4 subdivision or land development plat shall be recorded by
5 the applicant in the office of the clerk of the county

6 commission where the land is located. If the land is
7 located in more than one county, then the land develop-
8 ment plat shall be recorded in the county of the initial land
9 development and subsequently recorded in the other
10 counties when there is land development in that county.

§8A-5-10. Appeal process.

1 (a) An appeal may be made by an aggrieved person from
2 any decision or ruling of the planning commission to:

3 (1) The circuit court, pursuant to the provisions of article
4 nine of this chapter; or

5 (2) A board of subdivision and land development ap-
6 peals, if the governing body has established a board of
7 subdivision and land development appeals by ordinance.

8 (b) Within thirty days after the date of the denial, the
9 petition, specifying the grounds of the appeal in writing,
10 must be filed with:

11 (1) The circuit court of the county in which the affected
12 land or the major portion of the affected land is located; or

13 (2) The board of subdivision and land development
14 appeals that has jurisdiction over the affected land.

**§8A-5-11. Effect of approval of land development plans and
plats.**

1 A land development plan and plat that has not been
2 approved by the planning commission is without legal
3 effect: *Provided*, That failure to comply with this article
4 shall not invalidate or affect the title to any land within
5 the area of the land development plat.

§8A-5-12. Vested property right.

1 (a) A vested property right is a right to undertake and
2 complete the land development. The right is established
3 when the land development plan and plat is approved by
4 the planning commission and is only applicable under the

5 terms and conditions of the approved land development
6 plan and plat.

7 (b) Failure to abide by the terms and conditions of the
8 approved land development plan and plat will result in
9 forfeiture of the right.

10 (c) The vesting period for an approved land development
11 plan and plat which creates the vested property right is
12 five years from the approval of the land development plan
13 and plat by the planning commission.

14 (d) Without limiting the time when rights might other-
15 wise vest, a landowner's rights vest in a land use or
16 development plan and cannot be affected by a subsequent
17 amendment to a zoning ordinance or action by the plan-
18 ning commission when the landowner:

19 (1) Obtains or is the beneficiary of a significant affirma-
20 tive governmental act which remains in effect allowing
21 development of a specific project;

22 (2) Relies in good faith on the significant affirmative
23 governmental act; and

24 (3) Incurs extensive obligations or substantial expenses
25 in diligent pursuit of the specific project in reliance on the
26 significant affirmative governmental act.

27 (e) A vested right is a property right, which cannot be
28 taken without compensation. A court may award damages
29 against the local government in favor of the landowner for
30 monetary losses incurred by the landowner and court costs
31 and attorneys' fees, resulting from the local government's
32 bad faith refusal to recognize that the landowner has
33 obtained vested rights.

ARTICLE 6. METHODS OF SECURITY.

§8A-6-1. Bond requirements.

1 (a) If a bond is used as an acceptable method of security
2 for infrastructure construction, then it shall meet the
3 following requirements:

4 (1) Be in an amount to cover the infrastructure construc-
5 tion, as determined by the governing body;

6 (2) Be payable to the governing body;

7 (3) Have adequate surety and be satisfactory to the
8 governing body;

9 (4) Specify the time for the completion of the infrastruc-
10 ture construction; and

11 (5) Specify the date and/or condition for when the bond
12 will be released.

13 (b) The money from the bond shall only be used by the
14 governing body to which the bond is payable, for the
15 completion of the infrastructure construction, when the
16 infrastructure construction is not completed as approved
17 at the issuance of the bond.

§8A-6-2. Conditions as part of final plat approval.

1 (a) A subdivision and land development ordinance may
2 provide for the voluntary proffering by a landowner as a
3 requirement of final plat approval for a development
4 project.

5 (b) For purposes of this section, a “voluntary proffer” is
6 a written offer by a landowner to a governing body
7 whereby the landowner offers to satisfy certain reasonable
8 conditions as a requirement of the final plat approval for
9 a development project. A voluntary proffer made to a
10 governing body shall be in lieu of payment of an impact
11 fee as authorized by section four, article twenty, chapter
12 seven of this code: *Provided*, That no proffer may be
13 accepted by a governing body in lieu of an impact fee that
14 would otherwise go to schools without the approval of the
15 county board of education.

16 (c) For purposes of this section, a condition contained in
17 a voluntary proffer is considered reasonable if:

18 (1) The development project results in the need for the
19 conditions;

20 (2) The conditions have a reasonable relation to the
21 development project; and

22 (3) All conditions are in conformity with the comprehen-
23 sive plan adopted pursuant to this chapter.

24 (d) No proffer may be accepted by a governing body
25 unless it has approved a list detailing any proposed capital
26 improvements from all areas within the jurisdiction of the
27 governing body to which the proffer is made, which list
28 contains descriptions of any proposed capital improve-
29 ments, cost estimates, projected time frames for construct-
30 ing the improvements and proposed or anticipated funding
31 sources: *Provided*, That the approval of the list does not
32 limit the governing body from accepting proffers relating
33 to items not contained on the list.

34 (e) For purposes of this section, "capital improvement"
35 has the same definition as found in section three, article
36 twenty, chapter seven of this code.

37 (f) If a voluntary proffer includes the dedication of real
38 property or the payment of cash, the proffer shall provide
39 for the alternate disposition of the property or cash
40 payment in the event the property or cash payment is not
41 to be used for the purpose for which it was proffered.

42 (g) Notwithstanding any provision of this code to the
43 contrary, a municipality may transfer the portion of the
44 proceeds of a voluntary proffer intended by the terms of
45 the proffer to be used by the board of education of a
46 county in which the municipality is located upon the
47 condition that the portion so transferred may only be used
48 by the board for capital improvements.

§8A-6-3. Enforcement and guarantees.

1 (a) The planning commission is vested with all the
2 necessary authority to administer and enforce conditions

3 attached to the final plat approved for a development
4 project, including, but not limited to, the authority to:

5 (1) Order, in writing, the remedy for any noncompliance
6 with the conditions;

7 (2) Bring legal action to ensure compliance with the
8 conditions, including injunction, abatement, or other
9 appropriate action or proceeding; and

10 (3) Require a guarantee satisfactory to the planning
11 commission in an amount sufficient for and conditioned
12 upon the construction of any physical improvements
13 required by the conditions, or a contract for the construc-
14 tion of the improvements and the contractor's guarantee,
15 in like amount and so conditioned, which guarantee shall
16 be reduced or released by the planning commission upon
17 the submission of satisfactory evidence that construction
18 of the improvements has been completed in whole or in
19 part.

20 (b) Failure to meet all conditions attached to the final
21 plat approved for a development project shall constitute
22 cause to deny the issuance of any of the required use,
23 occupancy or improvement location permits, as may be
24 appropriate.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-1. Authority for zoning ordinance.

1 (a) The governing body of a municipality or a county
2 may regulate land use within its jurisdiction by:

3 (1) Adopting a comprehensive plan;

4 (2) Working with the planning commission and the
5 public to develop a zoning ordinance; and

6 (3) Enacting a zoning ordinance.

7 (b) A zoning ordinance may cover a county's entire
8 jurisdiction or parts of its jurisdiction.

9 (c) A zoning ordinance shall cover a municipality's entire
10 jurisdiction.

11 (d) A municipality may adopt, by reference, the zoning
12 ordinance of the county in which it is located.

§8A-7-2. Contents of zoning ordinance.

1 (a) The following must be considered when enacting a
2 zoning ordinance:

3 (1) Promoting general public welfare, health, safety,
4 comfort and morals;

5 (2) A plan so that adequate light, air, convenience of
6 access, and safety from fire, flood and other danger is
7 secured;

8 (3) Ensuring attractiveness and convenience is promoted;

9 (4) Lessening congestion;

10 (5) Preserving historic landmarks, sites, districts and
11 buildings;

12 (6) Preserving agricultural land; and

13 (7) Promoting the orderly development of land.

14 (b) A zoning ordinance may include the following:

15 (1) Regulating the use of land and designating or prohib-
16 iting specific land uses;

17 (2) Authorizing flexible planning standards to create,
18 redevelop, reuse, protect, and enhance the physical
19 qualities of the community;

20 (3) Designating historic districts and regulating the uses
21 of land and the design of buildings within the historic
22 district;

23 (4) Establishing corridor overlay districts to achieve land
24 design goals and regulating the uses of land within the
25 corridor overlay districts;

26 (5) Establishing design standards and site plan approval
27 procedures;

28 (6) Dividing the land of the governing body into different
29 zone classifications regulating the use of land, establishing
30 performance standards for various land uses when divid-
31 ing is not desired, or any combination of both;

32 (7) Authorizing overlay districts and special design
33 districts within which specific additional development
34 standards for each permitted, accessory and conditional
35 use shall apply;

36 (8) Regulating the height, area, bulk, use and architec-
37 tural features of buildings, including reasonable exterior
38 architectural features and reasonable aesthetic standards
39 for factory-built homes;

40 (9) Authorizing a process and standards for factory-built
41 homes: *Provided*, That a governing body is prohibited
42 from establishing a process and standards for regulating
43 factory-built homes that is more restrictive than a process
44 and standards for site-built homes;

45 (10) Preserving green spaces and requiring new green
46 spaces, landscaping, screening and the preservation of
47 adequate natural light;

48 (11) Regulating traffic flow and access, pedestrian flow
49 and access, parking and loading;

50 (12) Identifying flood-prone areas subject to periodic
51 flooding, and regulating with specific control the permit-
52 ted use, type of construction and height of floor levels
53 above base flood elevation permitted in the area so as to
54 lessen or avoid the hazards to persons and damage to
55 property resulting from the accumulation of storm or flood
56 waters;

57 (13) Designating an airport area and establishing land-
58 use regulations within a specific distance from the bound-
59 aries of the airport; and

60 (14) Authorizing planned unit developments to achieve
61 more efficient use of land and setting standards and
62 regulations for the developments.

63 (c) A zoning ordinance shall:

64 (1) Create a board of zoning appeals;

65 (2) Specify certification requirements for zoning district
66 maps that are consistent with the governing body's
67 comprehensive plan;

68 (3) Adopt procedures and requirements for nonconform-
69 ing land uses;

70 (4) Adopt procedures and requirements for variances;
71 and

72 (5) Adopt procedures and requirements for conditional
73 use permits.

§8A-7-3. Zoning – Generally.

1 (a) A zoning ordinance may cover a county's entire
2 jurisdiction or parts of its jurisdiction.

3 (b) The different zones created in a zoning ordinance by
4 a governing body do not have to cover or include the same
5 territory, and may overlap.

6 (c) Overlay districts and special design districts may
7 have specific additional development standards for each
8 permitted, accessory and conditional use.

9 (d) Each zone will be subject to the same rules, regula-
10 tions, standards and designations throughout the zone,
11 unless specific provisions are made by the governing body
12 in the zoning ordinance.

13 (e) Essential utilities and equipment are a permitted use
14 in any zoning district.

15 (f) Several areas of a municipality or county may be
16 classified in a zone even though the areas are not contigu-
17 ous.

18 (g) The boundaries of each zone and the designated
19 classifications must be shown on a zoning district map.
20 The boundaries may only be changed after appropriate
21 public hearing and zoning district map changes are
22 adopted by the governing body.

23 (h) A governing body shall certify the original zoning
24 district map. Subsequent versions of the zoning district
25 map shall be certified and clearly identified with an
26 effective date.

27 (i) All certified zoning district maps must be filed with
28 the clerk of the applicable governing body, the applicable
29 planning commission and the office of the clerk of the
30 applicable county commission.

§8A-7-4. Study and report on zoning.

1 (a) After adoption of a comprehensive plan and before
2 enacting a zoning ordinance, a governing body with the
3 applicable planning commission must study the land
4 within its jurisdiction. The study may include:

5 (1) Evaluating the existing conditions, the character of
6 the buildings, the most desirable use for the land and the
7 conservation of property values in relation to the adopted
8 comprehensive plan; and

9 (2) Holding public hearings and meetings with notice to
10 receive public input.

11 (b) The planning commission must use the information
12 from the study and the comprehensive plan and prepare a
13 report on zoning. The report shall include the proposed
14 zoning ordinance, with explanatory maps showing the
15 recommended boundaries of each district, and the rules,
16 regulations and restrictions for each district.

17 (c) No zoning ordinance may be enacted without a study
18 and report.

§8A-7-5. Enactment of zoning ordinance.

1 (a) After the study and the report, and before the govern-
2 ing body enacts the proposed zoning ordinance, the
3 governing body shall hold at least two public hearings and
4 give public notice. At least one public hearing shall be
5 held during the day and at least one public hearing shall
6 be held during the evening.

7 (b) The public notice shall be published in a local
8 newspaper of general circulation in the area affected by
9 the proposed zoning ordinance, as a Class II legal adver-
10 tisement in accordance with the provisions of article three,
11 chapter fifty-nine of this code, at least fourteen consecu-
12 tive days prior to the public hearing. The public notice
13 must contain the following:

14 (1) The date, time and place of the public hearings;

15 (2) That it is a public hearing on a proposed zoning
16 ordinance;

17 (3) A brief summary of the principal provisions of the
18 proposed zoning ordinance;

19 (4) A reference to the place where copies of the proposed
20 zoning ordinance may be examined; and

21 (5) That written objections to the proposed zoning
22 ordinance may be made and will be heard at the public
23 hearings and must be filed with the clerk of the applicable
24 governing body.

25 (c) Copies of the proposed zoning ordinance must be
26 made available to the public, at least two weeks prior to
27 the public hearings, at the office of the governing body and
28 all public libraries in the area to be zoned.

29 (d) After the public hearings, if the governing body
30 makes substantial amendments to the proposed zoning
31 ordinance prior to voting on the zoning ordinance, the
32 governing body shall hold another public hearing, after

33 public notice. The public notice shall be as provided in
34 subsections (b) and (c) of this section, and must contain a
35 brief summary of the amendments.

36 (e) After the public hearings and any amendments, the
37 governing body may enact the zoning ordinance or it may
38 hold an election to have the qualified voters residing in the
39 affected area approve the zoning ordinance.

§8A-7-6. Filing the zoning ordinance.

1 After the enactment of a zoning ordinance by a govern-
2 ing body, the governing body shall file the enacted zoning
3 ordinance in the office of the clerk of the county commis-
4 sion where the zoning ordinance applies.

§8A-7-7. Election on a zoning ordinance.

1 (a) The governing body of a municipality or a county
2 may submit a proposed zoning ordinance for approval or
3 rejection at any primary election, general election or
4 special election, to the qualified voters residing:

5 (1) Within the entire jurisdiction of the governing body,
6 if the proposed zoning ordinance is for the entire jurisdic-
7 tion; or

8 (2) In the specific area to be zoned by the proposed
9 zoning ordinance, if the proposed zoning ordinance only
10 applies to part of the governing body's jurisdiction.

11 (b) The election laws of this state apply to any election
12 on a proposed zoning ordinance.

13 (c) If a petition for an election on a zoning ordinance is
14 filed with the clerk of a governing body within ninety days
15 after the enactment of a zoning ordinance by a governing
16 body without an election, then a zoning ordinance does not
17 take effect until an election is held and a majority of the
18 voters approves it. At least fifteen percent of the total
19 eligible voters in the area to be affected by the proposed

20 zoning ordinance must sign, in their own handwriting, the
21 petition for an election on a zoning ordinance.

22 (d) Notice for an election on a proposed zoning ordinance
23 must be published in a local newspaper of general circula-
24 tion in the area affected by the proposed zoning ordinance,
25 as a Class II-0 legal advertisement, in accordance with the
26 provisions of article three, chapter fifty-nine of this code.

27 (e) The ballots for an election on a zoning ordinance shall
28 have the following:

29 For Zoning

30 Against Zoning

31 (f) The zoning ordinance is adopted if it is approved by
32 a majority of the voters and is effective on the date the
33 results of an election are declared. If a zoning ordinance
34 is rejected, the zoning ordinance does not take effect. The
35 governing body may submit the zoning ordinance to the
36 voters again at the next primary or general election.

**§8A-7-8. Amendments to the zoning ordinance by the governing
body.**

1 (a) After the enactment of the zoning ordinance, the
2 governing body of the municipality or the county may
3 amend the zoning ordinance without holding an election.

4 (b) Before amending the zoning ordinance, the governing
5 body with the advice of the planning commission, must
6 find that the amendment is consistent with the adopted
7 comprehensive plan. If the amendment is inconsistent,
8 then the governing body with the advice of the planning
9 commission, must find that there have been major changes
10 of an economic, physical or social nature within the area
11 involved which were not anticipated when the comprehen-
12 sive plan was adopted and those changes have substan-
13 tially altered the basic characteristics of the area.

§8A-7-9. Amendments to the zoning ordinance by petition.

1 (a) After the enactment of the zoning ordinance, the
2 planning commission or the owners of fifty percent or
3 more of the real property in the area to which the petition
4 relates may petition to amend the zoning ordinance. The
5 petition must be signed and be presented to the planning
6 commission or the clerk of the governing body.

7 (b) Within sixty days after a petition to amend the
8 zoning ordinance is received by the planning commission
9 or the governing body, then the planning commission or
10 the governing body must hold a public hearing after giving
11 public notice. The public notice of the date, time and
12 place of the public hearing must be published in a local
13 newspaper of general circulation in the area affected by
14 the proposed zoning ordinance, as a Class I legal advertise-
15 ment, in accordance with the provisions of article three,
16 chapter fifty-nine of this code, at least fifteen days prior to
17 the public hearing.

18 (c) If the petition to amend the zoning ordinance is from
19 the owners of fifty percent or more of the real property in
20 the area, then before amending the zoning ordinance, the
21 governing body with the advice of the planning commis-
22 sion, must find that the amendment is consistent with the
23 adopted comprehensive plan. If the amendment is incon-
24 sistent, then the governing body with the advice of the
25 planning commission, must find that there have been
26 major changes of an economic, physical or social nature
27 within the area involved which were not anticipated when
28 the comprehensive plan was adopted and those changes
29 have substantially altered the basic characteristics of the
30 area.

§8A-7-10. Effect of enacted zoning ordinance.

1 (a) After enactment of a zoning ordinance by a munici-
2 pality or county, all subsequent land development must be
3 done in accordance with the provisions of the zoning
4 ordinance.

5 (b) All zoning ordinances, and all amendments, supple-
6 ments and changes thereto, legally adopted under any
7 prior enabling acts, and all actions taken under the
8 authority of any such ordinances, are hereby validated and
9 continued in effect until amended or repealed by action of
10 the governing body of the municipality or the county taken
11 under authority of this article. These ordinances shall
12 have the same effect as though previously adopted as a
13 comprehensive plan of land use or parts thereof.

14 (c) Land, buildings or structures in use when a zoning
15 ordinance is enacted can continue the same use and such
16 use cannot be prohibited by the zoning ordinance, so long
17 as the use of the land, buildings or structures is maintained
18 and no zoning ordinance may prohibit alterations or
19 additions to or replacement of buildings or structures
20 owned by any farm, industry or manufacturer, or the use
21 of land presently owned by any farm, industry or manu-
22 facturer but not used for agricultural, industrial or
23 manufacturing purposes, or the use or acquisition of
24 additional land which may be required for the protection,
25 continuing development or expansion of any agricultural,
26 industrial or manufacturing operation of any present or
27 future satellite agricultural, industrial or manufacturing
28 use. A zoning ordinance may provide for the enlargement
29 or extension of a nonconforming use, or the change from
30 one nonconforming use to another.

31 (d) If a use of a property that does not conform to the
32 zoning ordinance has ceased and the property has been
33 vacant for one year, abandonment will be presumed unless
34 the owner of the property can show that the property has
35 not been abandoned: *Provided*, That neither the absence
36 of natural resources extraction or harvesting nor the
37 absence of any particular agricultural, industrial or
38 manufacturing process may be construed as abandonment
39 of the use. If the property is shown to be abandoned, then
40 any future use of the land, buildings or structures must
41 conform with the provisions of the zoning ordinance

42 regulating the use where the land, buildings or structures
43 are located, unless the property is a duly designated
44 historic landmark, historic site or historic district.

45 (e) Nothing in this chapter authorizes an ordinance, rule
46 or regulation preventing, outside of urban areas, the
47 complete use of natural resources by the owner.

§8A-7-11. Variance.

1 (a) A variance is a deviation from the minimum stan-
2 dards of the zoning ordinance and shall not involve
3 permitting land uses that are otherwise prohibited in the
4 zoning district nor shall it involve changing the zoning
5 classifications of a parcel of land.

6 (b) The board of zoning appeals shall grant a variance to
7 the zoning ordinance if it finds that the variance:

8 (1) Will not adversely affect the public health, safety or
9 welfare, or the rights of adjacent property owners or
10 residents;

11 (2) Arises from special conditions or attributes which
12 pertain to the property for which a variance is sought and
13 which were not created by the person seeking the variance;

14 (3) Would eliminate an unnecessary hardship and permit
15 a reasonable use of the land; and

16 (4) Will allow the intent of the zoning ordinance to be
17 observed and substantial justice done.

§8A-7-12. Validation of prior zoning ordinance.

1 All zoning ordinances, all amendments, supplements and
2 changes to the ordinance, legally adopted under prior acts,
3 and all action taken under the authority of the ordinance,
4 are hereby validated and the ordinance shall continue in
5 effect until amended or repealed by action of the govern-
6 ing body taken under authority of this article.

§8A-7-13. Process to replace nontraditional zoning ordinance.

1 (a) A governing body that has adopted or enacted a
2 nontraditional zoning ordinance may replace the nontradi-
3 tional zoning ordinance with a zoning ordinance. A
4 nontraditional zoning ordinance may be replaced with a
5 zoning ordinance by:

6 (1) The governing body; or

7 (2) A petition by the voters in the affected area. If the
8 voters petition to replace the nontraditional zoning
9 ordinance with a zoning ordinance, then the provisions of
10 this section and this chapter shall be followed.

11 (b) At least fifteen percent of the total eligible voters in
12 the affected area may petition the governing body to
13 replace the nontraditional zoning ordinance with a zoning
14 ordinance. The petition must include:

15 (1) The governing body's name to which the petition is
16 addressed;

17 (2) The reason for the petition, including:

18 (A) Replacing the nontraditional zoning ordinance with
19 a zoning ordinance; and

20 (B) That the question of replacing the nontraditional
21 zoning ordinance with a new zoning ordinance be put to
22 the voters of the affected area; and

23 (3) Signatures in ink or permanent marker.

24 (c) Each person signing the petition must be a registered
25 voter in the affected area and in the governing body's
26 jurisdiction. The petition must be delivered to the clerk of
27 the affected governing body. There are no time constraints
28 on the petition.

29 (d) Upon receipt of the petition with the required
30 number of qualifying signatures, the governing body shall
31 place the question on the next special, primary or general

32 election ballot. Notice for an election on replacing a
33 zoning ordinance must be published in a local newspaper
34 of general circulation in the area affected by the nonradi-
35 tional zoning ordinance, as a Class II-0 legal advertise-
36 ment, in accordance with the provisions of article three,
37 chapter fifty-nine of this code.

38 (e) The ballots for an election on replacing a zoning
39 ordinance shall have the following:

40 "Shall _____ (name of governing body) replace
41 _____ (name of commonly known nontraditional
42 zoning ordinance) with a zoning ordinance?

43 Yes

44 No"

45 (f) Upon a majority vote of the voters voting in favor of
46 replacing a non-traditional zoning ordinance with a
47 zoning ordinance, the governing body shall immediately
48 begin the process of adopting and enacting a zoning
49 ordinance, in accordance with the provisions of chapter
50 eight-a of this code. The governing body has a maximum
51 of three years from the date of the election to adopt a
52 zoning ordinance.

53 (g) The governing body may amend its nontraditional
54 zoning ordinance during the process of adopting and
55 enacting a zoning ordinance.

56 (h) If a majority of the voters reject replacing the nontra-
57 ditional zoning ordinance with a zoning ordinance, the
58 affected voters may not petition for a vote on the issue for
59 at least two years from the date of the election.

60 (i) Nothing in this section shall prevent a governing body
61 from amending its zoning ordinance in accordance with
62 this chapter.

ARTICLE 8. BOARD OF ZONING APPEALS.

PART I. BOARD OF ZONING APPEALS.

§8A-8-1. Board of zoning appeals authorized.

1 If a governing body adopts a zoning ordinance, then as
2 part of that zoning ordinance it shall create a board of
3 zoning appeals to hear appeals on zoning issues.

§8A-8-2. Continuation of established boards of zoning appeals.

1 A board of zoning appeals established prior to the
2 effective date of this chapter shall continue to operate as
3 though established under the terms of this chapter. All
4 actions lawfully taken under prior acts are hereby vali-
5 dated and continued in effect until amended or repealed
6 by action taken under the authority of this chapter.

§8A-8-3. Municipal board of zoning appeals.

1 (a) A municipal board of zoning appeals shall have five
2 members to be appointed by the governing body of the
3 municipality.

4 (b) The members of a municipal board of zoning appeals
5 must be:

6 (1) Residents of the municipality for at least three years
7 preceding his or her appointment;

8 (2) Cannot be a member of the municipal planning
9 commission; and

10 (3) Cannot hold any other elective or appointive office in
11 the municipal government.

12 (c) Upon the creation of a board of zoning appeals, the
13 members shall be appointed for the following terms: One
14 for a term of one year; two for a term of two years; and
15 two for a term of three years. The terms shall expire on
16 the first day of January of the first, second and third year,
17 respectively, following their appointment. Thereafter,
18 members shall serve three-year terms. If a vacancy occurs,

19 the governing body of the municipality shall appoint a
20 member for the unexpired term.

21 (d) The governing body of the municipality may appoint
22 up to three additional members to serve as alternate
23 members of the municipal board of zoning appeals. The
24 alternate members must meet the same eligibility require-
25 ments as set out in subsection (b) of this section. The term
26 for an alternate member is three years. The governing
27 body of the municipality may appoint alternate members
28 on a staggered term schedule.

29 (e) An alternate member shall serve on the board when
30 one of the regular members is unable to serve. The alter-
31 nate member shall serve until a final determination is
32 made in the matter to which the alternate member was
33 initially called on to serve.

34 (f) The municipal board of zoning appeals shall establish
35 rules and procedures for designating an alternate member.
36 An alternate member shall have the same powers and
37 duties of a regular board member.

38 (g) The members and alternate members of a county
39 board of zoning appeals shall serve without compensation,
40 but shall be reimbursed for all reasonable and necessary
41 expenses actually incurred in the performance of their
42 official duties.

§8A-8-4. County board of zoning appeals.

1 (a) A county board of zoning appeals shall have five
2 members to be appointed by the governing body of the
3 county.

4 (b) The members of a county board of zoning appeals
5 must be:

6 (1) Residents of the county for at least three years
7 preceding his or her appointment;

8 (2) Cannot be a member of the county planning commis-
9 sion; and

10 (3) Cannot hold any other elective or appointive office in
11 the county government.

12 (c) Where only a portion of the county is zoned, the
13 members of the board of zoning appeals for that part of
14 the county that is zoned, must be:

15 (1) Residents of that part of the county that is zoned for
16 at least three years preceding his or her appointment;

17 (2) Cannot be a member of the county planning commis-
18 sion; and

19 (3) Cannot hold any other elective or appointive office in
20 the county government.

21 (d) Upon the creation of a board of zoning appeals, the
22 members shall be appointed for the following terms: One
23 for a term of one year; two for a term of two years; and
24 two for a term of three years. The terms shall expire on
25 the first day of January of the first, second and third year,
26 respectively, following their appointment. Thereafter,
27 members shall serve three-year terms. If a vacancy occurs,
28 the governing body of the county shall appoint a member
29 for the unexpired term.

30 (e) The governing body of the county may appoint up to
31 three additional members to serve as alternate members of
32 the county board of zoning appeals. The alternate mem-
33 bers must meet the same eligibility requirements as set out
34 in subsection (b) or subsection (c) of this section, as
35 applicable. The term for an alternate member is three
36 years. The governing body of the county may appoint
37 alternate members on a staggered term schedule.

38 (f) An alternate member shall serve on the board when
39 one of the regular members is unable to serve. The alter-
40 nate member shall serve until a final determination is
41 made in the matter to which the alternate member was
42 initially called on to serve.

43 (g) The county board of zoning appeals shall establish
44 rules and procedures for designating an alternate member.
45 An alternate member shall have the same powers and
46 duties of a regular board member.

47 (h) The members and alternate members of a county
48 board of zoning appeals shall serve without compensation,
49 but shall be reimbursed for all reasonable and necessary
50 expenses actually incurred in the performance of their
51 official duties.

§8A-8-5. Board of zoning appeals meetings.

1 (a) A board of zoning appeals shall meet quarterly and
2 may meet more frequently at the written request of the
3 chairperson or by two or more members.

4 (b) Notice for a special meeting must be in writing,
5 include the date, time and place of the special meeting,
6 and be sent to all members at least two days before the
7 special meeting.

8 (c) Written notice of a special meeting is not required if
9 the date, time and place of the special meeting were set in
10 a regular meeting.

§8A-8-6. Quorum.

1 A board of zoning appeals must have quorum to conduct
2 a meeting. A majority of the members of a board of zoning
3 appeals is a quorum. No action of a board is official unless
4 authorized by a majority of the members present at a
5 regular or properly called special meeting.

§8A-8-7. Officers.

1 At its first regular meeting each year, a board of zoning
2 appeals shall elect a chairperson and vice chairperson
3 from its membership. The vice chairperson shall have the
4 power and authority to act as chairperson during the
5 absence or disability of the chairperson.

§8A-8-8. Governing body's duties.

1 The county commission in the case of a county board of
2 zoning appeals, and the governing body of the municipal-
3 ity in the case of a municipal board of zoning appeals,
4 shall provide the board of zoning appeals with:

5 (1) Suitable offices for the holding of meetings and the
6 preservation of plans, maps, documents and accounts; and

7 (2) Appropriate money to defray the reasonable expenses
8 of the board.

§8A-8-9. Powers and duties of board of zoning appeals.

1 A board of zoning appeals has the following powers and
2 duties:

3 (1) Hear, review and determine appeals from an order,
4 requirement, decision or determination made by an
5 administrative official or board charged with the enforce-
6 ment of a zoning ordinance or rule and regulation adopted
7 pursuant thereto;

8 (2) Authorize exceptions to the district rules and regula-
9 tions only in the classes of cases or in particular situations,
10 as specified in the zoning ordinance;

11 (3) Hear and decide conditional uses of the zoning
12 ordinance upon which the board is required to act under
13 the zoning ordinance;

14 (4) Authorize, upon appeal in specific cases, a variance
15 to the zoning ordinance;

16 (5) Reverse, affirm or modify the order, requirement,
17 decision or determination appealed from and have all the
18 powers and authority of the official or board from which
19 the appeal was taken;

20 (6) Adopt rules and regulations concerning:

21 (A) The filing of appeals, including the process and forms
22 for the appeal;

23 (B) Applications for variances and conditional uses;

- 24 (C) The giving of notice; and
- 25 (D) The conduct of hearings necessary to carry out the
26 board's duties under the terms of this article;
- 27 (7) Keep minutes of its proceedings;
- 28 (8) Keep an accurate and complete audio record of all the
29 board's proceedings and official actions and keep the
30 audio record in a safe manner, which audio record is
31 accessible within twenty-four hours of demand, for three
32 years;
- 33 (9) Record the vote on all actions taken;
- 34 (10) Take responsibility for the custody and preservation
35 of all papers and documents of the board. All minutes and
36 records shall be filed in the office of the board and shall be
37 public records;
- 38 (11) With consent from the governing body, hire employ-
39 ees necessary to carry out the duties and responsibilities of
40 the board: *Provided*, That the governing body sets the
41 salaries; and
- 42 (12) Supervise the fiscal affairs and responsibilities of
43 the board.

PART II. APPEAL PROCESS TO BOARD OF ZONING APPEALS.

§8A-8-10. Appeal to board of zoning appeals.

- 1 (a) An appeal from any order, requirement, decision or
2 determination made by an administrative official or board
3 charged with the enforcement of a zoning ordinance, or
4 rule and regulation adopted pursuant to a zoning ordi-
5 nance, shall be filed with the board of zoning appeals.
- 6 (b) The appeal shall:
- 7 (1) Specify the grounds of the appeal;
- 8 (2) Be filed within thirty days of the original order,
9 requirement, decision or determination made by an

10 administrative official or board charged with the enforce-
11 ment of a zoning ordinance; and

12 (3) Be on a form prescribed by the board.

13 (c) Upon request of the board of zoning appeals, the
14 administrative official or board shall transmit all docu-
15 ments, plans and papers constituting the record of the
16 action from which the appeal was taken.

§8A-8-11. Notice and hearing of appeal.

1 (a) Within ten days of receipt of the appeal by the board
2 of zoning appeals, the board shall set a time for the
3 hearing of the appeal and give notice. The hearing on the
4 appeal must be held within forty-five days of receipt of the
5 appeal by the board.

6 (b) At least fifteen days prior to the date set for the
7 hearing on the appeal, the board of zoning appeals shall
8 publish a notice of the date, time and place of the hearing
9 on the appeal as a Class I legal advertisement in compli-
10 ance with the provisions of article three, chapter fifty-nine
11 of this code, and written notice shall be given to the
12 interested parties. The publication area shall be the area
13 covered in the appeal.

14 (c) The board of zoning appeals may require the party
15 taking the appeal to pay for the cost of public notice and
16 written notice to interested parties.

17 (d) At the hearing, any party may appear in person, by
18 agent or by an attorney licensed to practice in this state.

19 (e) Every decision by the board must be in writing and
20 state findings of fact and conclusions of law on which the
21 board based its decision. If the board fails to provide
22 findings of fact and conclusions of law adequate for
23 decision by the circuit court and as a result of the failure,
24 the circuit court returns an appealed matter to the board
25 and dismisses jurisdiction over an applicant's appeal
26 without deciding the matter, whether the court returns the

27 matter with or without restrictions, the board shall pay
28 any additional costs for court filing fees, service of process
29 and reasonable attorneys' fees required to permit the
30 person appealing the board's decision to return the matter
31 to the circuit court for completion of the appeal.

§8A-8-12. Stays; exception.

1 When an appeal has been filed with the board of zoning
2 appeals, all proceedings and work on the premises in
3 question shall be stayed, unless the official or board from
4 where the appeal was taken certifies in writing to the
5 board of zoning appeals, that a stay would cause imminent
6 peril to life or property. If the written certification is filed,
7 proceedings or work on the premises shall not be stayed.
8 Nothing in this section prevents obtaining a restraining
9 order.

ARTICLE 9. APPEAL PROCESS.

§8A-9-1. Petition for writ of certiorari.

1 (a) Every decision or order of the planning commission,
2 board of subdivision and land development appeals, or
3 board of zoning appeals is subject to review by certiorari.

4 (b) Within thirty days after a decision or order by the
5 planning commission, board of subdivision and land
6 development appeals, or board of zoning appeals, any
7 aggrieved person may present to the circuit court of the
8 county in which the affected premises are located, a duly
9 verified petition for a writ of certiorari setting forth:

10 (1) That the decision or order by the planning commis-
11 sion, board of subdivision and land development appeals,
12 or board of zoning appeals is illegal in whole or in part;
13 and

14 (2) Specify the grounds of the alleged illegality.

§8A-9-2. Notice to adverse parties.

1 (a) Upon filing a petition for a writ of certiorari with the
2 clerk of the circuit court of the county in which the

3 affected premises are located, the petitioner shall cause a
4 notice to be issued and served by the sheriff of the county
5 upon:

6 (1) The adverse party, as shown by the record of the
7 appeal in the office of the planning commission, board of
8 subdivision and land development appeals, or board of
9 zoning appeals; and

10 (2) The chairperson or secretary of the planning commis-
11 sion, board of subdivision and land development appeals,
12 or board of zoning appeals, as applicable.

13 (b) The adverse party is any property owner appearing at
14 the hearing before the planning commission, board of
15 subdivision and land development appeals, or board of
16 zoning appeals in opposition to the petitioner.

17 (c) If the record shows a written document containing
18 the names of more than three property owners opposing
19 the request of the petitioner, then the petitioner is required
20 to cause notice to be issued and served upon the three
21 property owners whose names first appear upon the
22 written document. Notice to the other parties named in
23 the written document is not required.

24 (d) The notice shall:

25 (1) State that a petition for a writ of certiorari has been
26 filed in the circuit court of the county asking for a review
27 of the decision or order of the planning commission, board
28 of subdivision and land development appeals, or board of
29 zoning appeals;

30 (2) Designate the affected premises; and

31 (3) Specify the date of the decision or order that is the
32 subject of the petition for a writ of certiorari.

33 (e) Service of the notice by the sheriff on the chairperson
34 or secretary of the planning commission, board of subdivi-
35 sion and land development appeals, or board of zoning

36 appeals shall constitute notice to the commission or
37 boards. Service of the notice by the sheriff to the govern-
38 ing body and to any official or board thereof charged with
39 the enforcement of the subdivision and land development
40 ordinance, subdivision or land development plan and plat,
41 or zoning ordinance. No further summons or notice with
42 reference to the filing of such petition shall be necessary.

43 (f) As an alternative to the requirements for notice
44 prescribed in the preceding subsections of this section,
45 notice is sufficient upon a showing that the chairperson or
46 secretary of the planning commission, board of subdivision
47 and land development appeals, or board of zoning appeals
48 and all adjacent landowners to the affected premises have
49 received personal service of process of the notice contain-
50 ing information as required in subsection (d) of this
51 section. As to all other interested parties, notice shall be
52 sufficient if notice containing information as required in
53 subsection (d) of this section, is published as a Class III-0
54 legal advertisement, in the county or counties wherein the
55 affected premises are located.

§8A-9-3. Court action on petition.

1 (a) Within twenty days after a petition for a writ of
2 certiorari is presented, the planning commission, board of
3 subdivision and land development appeals, or board of
4 zoning appeals must show the circuit court, or a judge in
5 vacation, of the county in which the affected premises are
6 located, cause why a writ of certiorari should not be
7 issued.

8 (b) If the planning commission, board of subdivision and
9 land development appeals, or board of zoning appeals fails
10 to show the court or judge that a writ should not be issued,
11 then the court or judge may allow a writ of certiorari
12 directed to the planning commission, board of subdivision
13 and land development appeals, or board of zoning appeals.

14 (c) The writ shall prescribe the time in which a return
15 shall be made to it. This time shall be not less than ten

16 days from the date of issuance of the writ and may be
17 extended by the court or judge.

§8A-9-4. Stay of work on allowance of writ.

1 (a) The allowance of the writ of certiorari shall not stay
2 proceedings or work on the premises affected by the
3 decision or order to be brought up for review.

4 (b) The court or judge may, upon application and on
5 notice to all parties to the decision or order and on due
6 cause shown, grant such relief as the circumstances of the
7 case may require, including an order staying the proceed-
8 ings or work until final determination of the case by the
9 court or judge.

10 (c) The staying order may be issued by the court or judge
11 without requiring the petitioner to enter into a written
12 undertaking with the adverse party or parties affected
13 thereby for the payment of damages by reason of such
14 staying order.

§8A-9-5. Return to writ.

1 (a) The return to the writ of certiorari by the planning
2 commission, board of subdivision and land development
3 appeals, or board of zoning appeals must concisely set
4 forth the pertinent facts and data and present material to
5 show the grounds of the decision or order appealed. The
6 return must be verified by the secretary of the planning
7 commission, board of subdivision and land development
8 appeals, or board of zoning appeals.

9 (b) The planning commission, board of subdivision and
10 land development appeals, or board of zoning appeals does
11 not have to return the original papers acted upon by it. It
12 shall be sufficient to return certified copies of all or such
13 portion of the papers as may be called for by the writ.

§8A-9-6. Action by circuit court or judge.

1 (a) The court or judge may consider and determine the
2 sufficiency of the allegations of illegality contained in the

3 petition without further pleadings and may make a
4 determination and render a judgment with reference to the
5 legality of the decision or order of the planning commis-
6 sion, board of subdivision and land development appeals,
7 or board of zoning appeals on the facts set out in the
8 petition and return to the writ of certiorari.

9 (b) If it appears to the court or judge that testimony is
10 necessary for the proper disposition of the matter, the
11 court or judge may take evidence to supplement the
12 evidence and facts disclosed by the petition and return to
13 the writ of certiorari, but no such review shall be by trial
14 de novo.

15 (c) In passing upon the legality of the decision or order
16 of the planning commission, board of subdivision and land
17 development appeals, or board of zoning appeals, the court
18 or judge may reverse, affirm or modify, in whole or in part,
19 the decision or order.

§8A-9-7. Appeal from final judgment of circuit court or judge.

1 An appeal may be taken to the West Virginia supreme
2 court of appeals from the final judgment of the court or
3 judge reversing, affirming or modifying the decision or
4 order of the planning commission, board of subdivision
5 and land development appeals, or board of zoning appeals
6 within the same time, in the same manner, and upon the
7 same terms, conditions and limitations as appeals in other
8 civil cases.

ARTICLE 10. ENFORCEMENT PROVISIONS.

§8A-10-1. Enforcement.

1 The governing body of a municipality or county may:
2 (1) Enforce penalties, set out in section two of this
3 article, for failure to comply with the provisions of any
4 ordinance or rule and regulation adopted pursuant to the
5 provisions of this chapter; and

6 (2) Declare that any buildings erected, raised or con-
7 verted, or land or premises used in violation of any provi-
8 sion of any ordinance or rule and regulation adopted under
9 the authority of this chapter shall be a common nuisance
10 and the owner of the building, land or premises shall be
11 liable for maintaining a common nuisance.

§8A-10-2. Penalty.

1 A person who violates any provision of this chapter is
2 guilty of a misdemeanor, and upon conviction, shall be
3 fined not less than fifty dollars nor more than five hundred
4 dollars.

§8A-10-3. Injunction.

1 (a) The planning commission, board of subdivision and
2 land development appeals, the board of zoning appeals or
3 any designated enforcement official may seek an injunc-
4 tion in the circuit court of the county where the affected
5 property is located, to restrain a person or unit of govern-
6 ment from violating the provisions of this chapter or of
7 any ordinance or rule and regulation adopted pursuant
8 hereto.

9 (b) The planning commission, board of subdivision and
10 land development appeals, the board of zoning appeals or
11 any designated enforcement official may also seek a
12 mandatory injunction in the circuit court where the
13 affected property is located, directing a person or unit of
14 government to remove a structure erected in violation of
15 the provisions of this chapter or of any ordinance or rule
16 and regulation adopted pursuant hereto.

17 (c) If the planning commission, board of subdivision and
18 land development appeals, the board of zoning appeals or
19 the designated enforcement official is successful in any
20 such suit, the respondent shall bear the costs of the action.

§8A-10-4. Special provisions.

1 (a) The planning and zoning provisions of this chapter
2 are supplemental to and do not abrogate the powers and

3 authority extended to agencies, bureaus, departments,
4 commissions, divisions and officials of the state govern-
5 ment by other state statute and those powers and authority
6 shall remain in full force and effect.

7 (b) The powers of supervision and regulation by the
8 divisions of the state government over municipal, county
9 and other local governmental units and persons are also
10 not abrogated and shall continue in full force and effect.

§8A-10-5. General repealer.

1 All acts or parts of acts, including special legislative
2 charters, inconsistent with the provisions of this chapter
3 are hereby repealed to the extent of their inconsistency,
4 except as provided in this chapter.

ARTICLE 11. SPECIAL PROVISIONS.

§8A-11-1. Standards for factory-built homes.

1 (a) Notwithstanding any existing provisions of law,
2 municipal or county ordinance, or local building code, but
3 excluding any provisions relating to zoning or land use
4 control, the standards for factory-built homes, housing
5 prototypes, subsystems, materials and components certi-
6 fied as acceptable by the federal department of housing
7 and urban development are considered acceptable and are
8 approved for use in housing construction in this state.

9 (b) A certificate from the state director of the federal
10 housing administration of the department of housing and
11 urban development shall constitute prima facie evidence
12 that the products or materials listed therein are acceptable
13 and such certificates shall be furnished by the building
14 contractor to any local building inspector or other local
15 housing authority upon request.

§8A-11-2. Permitted use for group residential facility.

1 (a) A group residential facility as defined in article
2 seventeen, chapter twenty-seven of this code, shall be a

3 permitted residential use of property for the purposes of
4 zoning and is a permitted use in zones or districts where
5 single family dwelling units or multi-family dwelling units
6 are permitted.

7 (b) A governing body of a municipality or a county, and
8 a planning commission, cannot discriminate in regard to
9 housing and cannot require a group residential facility or
10 its owner or operator, to obtain a conditional use permit,
11 special use permit, special exception or variance to locate
12 a group residential facility in a zone or district where
13 single family dwelling units or multi-family dwelling units
14 are permitted.

15 (c) The provisions of this section do not exempt any
16 group residential facility from the structural requirements
17 of any bona fide historic preservation district.

ARTICLE 12. VOLUNTARY FARMLAND PROTECTION PROGRAMS.

§8A-12-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that
2 agriculture is a unique "life support" industry and that a
3 need exists to assist those agricultural areas of the state
4 which are experiencing the irreversible loss of agricultural
5 land.

6 (b) It is the intent of the Legislature to provide persons
7 and other entities an opportunity to voluntarily protect
8 agricultural land and woodland in order to:

9 (1) Assist in sustaining the farming community;

10 (2) Provide sources of agricultural products within the
11 state for the citizens of the state;

12 (3) Control the urban expansion which is consuming the
13 agricultural land, topsoil and woodland of the state;

14 (4) Curb the spread of urban blight and deterioration;

15 (5) Protect agricultural land and woodland as open-
16 space land;

17 (6) Enhance tourism; and

18 (7) Protect worthwhile community values, institutions
19 and landscapes which are inseparably associated with
20 traditional farming.

21 (c) Further, it is the intent of the Legislature to establish
22 a West Virginia agricultural land protection authority,
23 hereinafter "authority", to assist persons, other entities
24 and counties to obtain funding from any source available
25 to accomplish the purposes of the voluntary farmland
26 protection programs.

**§8A-12-2. County farmland protection programs and farmland
protection boards authorized; authority of county
commission to approve purchase of farmland
easements; expense reimbursement of actual
expenses for the board members.**

1 (a) The county commission of each county may adopt
2 and implement a farmland protection program within the
3 county. The county commission of each county which
4 decides to adopt and implement a farmland protection
5 program shall appoint a farmland protection board. The
6 farmland protection board shall administer on behalf of
7 the county commission all matters concerning farmland
8 protection. The county commission has final approval
9 authority for any and all purchases of easements for the
10 farmland protection program by the board.

11 (b) The farmland protection board shall adopt bylaws
12 prescribing the board's officers, meeting dates, re-
13 cord-keeping procedures, meeting attendance require-
14 ments and other internal operational procedures. The
15 member of the farmland protection board who is a county
16 commissioner shall serve as temporary chairman of the
17 board until the board's bylaws are adopted and until the
18 board's officers are selected as prescribed by those bylaws.
19 The farmland protection board shall prepare a document

20 proposing a farmland protection program which is consis-
21 tent with the Legislature's intent.

22 (c) Each member of the board shall receive expense
23 reimbursement for actual expenses incurred while engaged
24 in the discharge of official duties, the actual expenses not
25 to exceed the amount paid to members of the Legislature.

§8A-12-3. Content and requirements of farmland protection programs.

1 (a) An adopted farmland protection program shall
2 include only those qualifying properties which are volun-
3 tarily offered into the program by the landowners of the
4 properties.

5 (b) An adopted farmland protection program shall meet
6 the following minimum requirements:

7 (1) The program shall be developed by the county
8 farmland protection board and approved by the county
9 commission. The county farmland protection board, in
10 consultation with the local conservation district, shall
11 administer the farmland protection program;

12 (2) The board shall establish uniform standards and
13 guidelines for the eligibility of properties for the program.
14 The standards and guidelines shall take into consideration
15 the following: Current and past uses of the property;
16 existing property improvements, property tract size and
17 shape; location of the property tract in relation to other
18 potential agricultural property tracts; impending threat of
19 conversion of the property to nonagricultural uses; prop-
20 erty ownership and existing deed covenants; and restric-
21 tions with respect to the property; and

22 (3) The guidelines established by the board shall outline
23 the various methods of farmland protection which are
24 available to prospective participating property owners and
25 the procedures to be followed in applying for program
26 consideration.

§8A-12-4. Farmland protection boards — appointment, composition, terms.

1 (a) *Composition.* — A farmland protection board shall be
2 composed of seven members, each serving without com-
3 pensation. Membership on the farmland protection board
4 shall consist of the following: One county commissioner;
5 the executive director of the county development author-
6 ity; one farmer who is a county resident and a member of
7 the county farm bureau; one farmer who is a county
8 resident and a member of a conservation district; one
9 farmer who is a county resident; and two county residents
10 who are not members of any of the foregoing organiza-
11 tions. All members of the farmland protection board shall
12 be voting members, except the county commissioner who
13 shall serve in an advisory capacity as a nonvoting member.

14 (b) *Terms.* — Each member of a farmland protection
15 board shall be appointed for a term of office of four years
16 except the initial appointment of two voting board mem-
17 bers shall be for a term of two years:

18 (1) No member may serve for more than two consecutive
19 full terms; and

20 (2) An appointment to fill a vacancy shall be for the
21 remainder of the unexpired term.

§8A-12-5. Farmland protection boards — powers.

1 A farmland protection board has the following general
2 powers:

3 (a) *Power to sue.* — To sue and be sued in contractual
4 matters in its own name;

5 (b) *Power to contract.* — To enter into contracts generally
6 and to execute all instruments necessary or appropriate to
7 carry out its purposes;

8 (c) *Power to restrict use of land.* — To acquire or cohold,
9 by gift, purchase, devise, bequest or grant, easements in
10 gross, fee or other rights to restrict the use of agricultural

11 land and woodland as may be designated to maintain the
12 character of the land as agricultural land or woodland:
13 *Provided*, That the county commission has final approval
14 authority for any and all purchases of easements for the
15 farmland protection program by the board;

16 (d) *Power to implement rules.* – To implement rules
17 necessary to achieve the purposes of the voluntary farm-
18 land protection programs;

19 (e) *Power to disseminate information.* – To promote the
20 dissemination of information throughout the county
21 concerning the activities of the farmland protection board;
22 and

23 (f) *Power to seek funding.* – To pursue and apply for any
24 and all county, state, federal and private funding avail-
25 able, consistent with the purpose of the voluntary farm-
26 land protection programs.

§8A-12-6. Farmland protection board duties.

1 The duties of each farmland protection board are as
2 follows:

3 (a) To report to the county commission with respect to
4 the acquisition of easements by the farmland protection
5 board within the county and to obtain final approval
6 authority for any and all purchases of easements for the
7 farmland protection program by the board;

8 (b) To advise the authority concerning county priorities
9 for agricultural protection;

10 (c) To promote protection of agriculture within the
11 county by offering information and assistance to landown-
12 ers with respect to the acquisition of easements;

13 (d) To seek and apply for all available funds from
14 federal, state, county and private sources to accomplish
15 the purposes of the voluntary farmland protection pro-
16 grams; and

17 (e) To perform any other duties assigned by the county
18 commission.

**§8A-12-7. West Virginia agricultural land protection authority
– established.**

1 A West Virginia agricultural land protection authority is
2 established within the department of agriculture. The
3 authority has the powers and duties provided in this
4 article.

**§8A-12-8. West Virginia agricultural land protection authority
– board of trustees.**

1 (a) *Composition; chairman; quorum; qualifications.* –The
2 authority established on the first day of July, two thou-
3 sand two, shall be governed and administered by a board
4 of trustees composed of the state treasurer, the auditor and
5 the commissioner of agriculture, who shall serve as ex
6 officio members, and nine members to be appointed by the
7 governor, by and with the advice and consent of the
8 Senate, at least five of whom shall be representative of
9 farmers from different areas of the state. The state
10 treasurer, auditor and the commissioner of agriculture
11 may appoint designees to serve on the board of trustees.
12 One of the appointed members who is not a representative
13 of farmers shall be a representative of the division of
14 natural resources; one of the appointed members who is
15 not a representative of farmers shall be a representative of
16 the conservation district; and one of the appointed mem-
17 bers who is not a representative of farmers shall be a
18 representative of an I.R.C. 501(c)(3) qualified land trust.
19 Three of the five representatives of farmers shall be
20 appointed as follows:

21 (1) Two from a list of five nominees submitted by the
22 West Virginia department of agriculture; and

23 (2) One from a list of three nominees submitted by the
24 West Virginia farm bureau.

25 The governor shall appoint the chairman of the board
26 from among the nine appointed members. A majority of
27 the members of the board serving at any one time consti-
28 tutes a quorum for the transaction of business.

29 Notwithstanding any provision of law to the contrary, a
30 person may be appointed to and serve on the board as an
31 appointed member even if prior to the appointment the
32 person conveyed an easement on the person's land to the
33 authority.

34 (b) *Terms.* – (1) The governor, with the advice and
35 consent of the Senate, shall appoint the nine members for
36 the following terms:

37 (A) Three for a term of four years;

38 (B) Three for a term of three years; and

39 (C) Three for a term of two years.

40 (2) Successors to appointed members whose terms expire
41 shall be appointed for terms of four years. Vacancies shall
42 be filled for the unexpired term. An appointed member
43 may not serve more than two successive terms. Appoint-
44 ment to fill a vacancy may not be considered as one of two
45 terms.

46 (c) *Oath.* – Appointed members shall take the oath of
47 office as prescribed by law.

48 (d) *Compensation and expenses.* – Members shall not
49 receive compensation. Each member of the board shall
50 receive expense reimbursement for actual expenses
51 incurred while engaged in the discharge of official duties,
52 the actual expenses not to exceed the amount paid to
53 members of the Legislature.

**§8A-12-9. West Virginia agricultural land protection authority
– powers.**

1 The authority has the following general powers:

2 (a) *Power to sue.* – To sue and be sued in contractual
3 matters in its own name;

4 (b) *Power to contract.* – To enter into contracts generally
5 and to execute all instruments necessary or appropriate to
6 carry out its purposes;

7 (c) *Power to restrict use of land.* – To acquire or cohold,
8 by gift, purchase, devise, bequest or grant, easements in
9 gross, fee or other rights to restrict the use of agricultural
10 land and woodland as may be designated to maintain the
11 character of the land as agricultural land or woodland;

12 (d) *Power to disseminate information.* – To promote the
13 dissemination of information throughout the state con-
14 cerning the activities of the farmland protection board;
15 and

16 (e) *Power to seek funding.* – To pursue and apply for any
17 and all state, federal and private funding available
18 consistent with the purpose of the voluntary farmland
19 protection programs.

**§8A-12-10. West Virginia agricultural land protection authority
– duties.**

1 The authority shall:

2 (a) Disseminate information regarding agricultural land
3 protection and promote the protection of agricultural land;

4 (b) Assist county farmland protection boards in applying
5 for and obtaining all state and federal funding available
6 consistent with the purposes of the farmland protection
7 programs;

8 (c) Upon request of a farmland protection board, provide
9 technical and legal services necessary to procure, acquire,
10 draft, file and record conservation and preservation
11 easements;

12 (d) Prepare and file electronically with the governor's
13 office and with the Legislature by the thirty-first day of

14 August of each year a report including, but not limited to,
15 the following information:

16 (1) The cost per easement obtained;

17 (2) The identity of all applicants for conservation and
18 preservation easements; and

19 (3) The identity of all applicants from whom conserva-
20 tion and preservation easements have been acquired;

21 (e) Seek and apply for all available funds from federal,
22 state and private sources to accomplish the purposes of the
23 farmland protection programs.

§8A-12-11. Definitions.

1 For purposes of the voluntary farmland protection
2 programs, the following terms have the meanings set forth
3 in this section.

4 (a) *Acquisition of easement.* — The holding or coholding
5 of land-use restrictions as defined in this article, whether
6 obtained through purchase, gift, devise, bequest, grant or
7 contract to cohold with another holder.

8 (b) *Conservation easement.* — This article incorporates
9 the definition of a conservation easement found in section
10 three, article twelve, chapter twenty of this code, except
11 that a conservation easement created under this article
12 must be held or coheld by at least one “holder” as defined
13 in that section in perpetuity.

14 (c) *Farm, farmland or agricultural land.* — A tract, or
15 contiguous tracts of land, of any size, used or useable for
16 agriculture, horticulture or grazing and includes all real
17 property designated as wetlands that are part of a prop-
18 erty used or useable as farmland.

19 (d) *Preservation easement.* — This article incorporates the
20 definition of a preservation easement found in section
21 three, article twelve, chapter twenty of this code, except

22 that a preservation easement created under this article
23 must be held or coheld by at least one "holder" as defined
24 in that section and must be perpetual in its duration.

25 (e) *Woodland.* – Woodland shall be considered land of a
26 farm only if it is part of or appurtenant to a tract of land
27 which is a farm, or held by common ownership of a person
28 or entity owning a farm, but in no event may woodland
29 include land used primarily in commercial forestry or the
30 growing of timber for commercial purposes or any other
31 use inconsistent with farm use.

32 (f) *Opt-out provision.* – A provision which may be
33 inserted into any conservation or preservation easement
34 agreement entered into pursuant to this article which
35 would act as a mechanism to place the easement selling
36 price into an escrow fund for the purpose of allowing the
37 owner or owners up to five years to rescind the decision to
38 enter into the farmland protection program.

§8A-12-12. Methods of farmland protection.

1 (a) The authority or a county farmland protection board
2 may negotiate with and compensate eligible property
3 owners to ensure the protection of farmland within the
4 county or state. Methods of protecting farmland may
5 include, but are not limited to, the following:

6 (1) *Acquisition of conservation easement or preservation*
7 *easement.* – With the consent of a property owner, the
8 county farmland protection board or the authority may
9 acquire and place on record a conservation or preservation
10 easement. Acquired easements apply only to those proper-
11 ties which qualify for consideration under the terms
12 established by an adopted farmland protection program;
13 and

14 (2) *Acquisition of land and disposition.* – With the
15 consent of a property owner, the county farmland protec-
16 tion board or the authority may acquire any property
17 which qualifies for agricultural protection under terms

18 established by an adopted farmland protection program.
19 The county farmland protection board or the authority
20 may lease, as lessor, acquired property for agricultural
21 uses or may restrict the property to agricultural uses and
22 sell the property at fair market value for use as a farm.
23 Any property acquired by a county farmland protection
24 board or the authority and then sold shall be sold subject
25 to a conservation or preservation easement. If the prop-
26 erty is leased, the lessee shall pay to the county commis-
27 sion, in addition to rent, an annual fee set by the county
28 commission. The amount of this annual fee shall be
29 commensurate with the amount of property taxes which
30 would be assessed in accordance with the provisions of
31 this code upon the property if the property were held by a
32 private landowner.

33 (b) Revenues from the sale of properties restricted to
34 agricultural uses shall be used to recover the original
35 purchase costs of the properties and shall be returned to
36 the applicable funds which were used by the county
37 farmland protection board or the authority to purchase the
38 property. Any profits resulting from the sale of property
39 restricted to agricultural uses shall be deposited in a
40 farmland protection fund.

§8A-12-13. Offer of conservation or preservation easements.

1 (a) *Owner may offer to sell or donate a conservation or*
2 *preservation easement.* – An owner of farmland may offer
3 by written application to sell or donate a conservation or
4 preservation easement on all or any portion of the farm to
5 a county farmland board or the authority.

6 (b) *Requirements for application to sell or donate.* – In
7 order to be considered by a county farmland protection
8 board or the authority, an application to sell or donate
9 shall:

10 (1) Include an asking price, if any, at which the owner is
11 willing to sell a conservation or preservation easement and
12 shall specify the terms under which the offer is made; and

13 (2) Include a complete description of the land, including,
14 but not limited to, an itemization of all debts secured by
15 the land and the identity and amount of all liens.

§8A-12-14. Value of conservation or preservation easement.

1 (a) *Maximum value.* – The maximum value of any
2 conservation or preservation easement acquired by the
3 county farmland protection board or the authority is the
4 asking price or the difference between the fair market
5 value of the land and the agricultural value of the land,
6 whichever is lower.

7 (b) *Fair market value.* – The fair market value of the
8 land is the price as of the valuation date for the highest
9 and best use of the property which a vendor, willing but
10 not obligated to sell, would accept for the property, and
11 which a purchaser, willing but not obligated to buy, would
12 pay for the property if the property was not subject to any
13 restriction imposed under this article.

14 (c) *Agricultural value.* – The agricultural value of land is
15 the price as of the valuation date which a vendor, willing
16 but not obligated to sell, would accept for the property,
17 and which a purchaser, willing but not obligated to buy,
18 would pay for the property subject to the restrictions
19 placed upon it by the conservation or preservation ease-
20 ment.

21 (d) *Determination of values.* – The value of the easement
22 is determined at the time the county farmland protection
23 board or the authority is requested in writing to acquire
24 the easement. The fair market value is determined by the
25 county farmland protection board or the authority based
26 on one or more appraisals obtained by the county farm-
27 land protection board or the authority, and appraisals, if
28 any, of the landowner.

29 (e) *Arbitration.* – If the landowner and the county
30 farmland protection board or the authority do not agree on
31 the value of the easement as determined by the state, the

32 landowner, the county farmland protection board or the
33 authority may request that the matter be referred to a
34 mutually agreed upon mediator for arbitration as to the
35 value of the easement. The arbitration shall be conducted
36 in accordance with the rules promulgated by the American
37 arbitration association. The value determined at arbitra-
38 tion is binding upon the owner and the county farmland
39 protection board or the authority in a purchase of the
40 easement made subsequent to the arbitration for a period
41 of two years, unless the landowner and the county farm-
42 land protection board or the authority agree upon a lesser
43 value or the landowner, the county farmland protection
44 board or the authority appeals the results of the arbitra-
45 tion to the circuit court.

**§8A-12-15. Criteria for acquisition of conservation and preser-
vation easements by county farmland protection
boards and the authority.**

1 The authority and county farmland protection boards, in
2 ranking applications for conservation and preservation
3 easements, shall consider the following factors as priori-
4 ties:

5 (a) The imminence of residential, commercial or indus-
6 trial development;

7 (b) The total acreage offered for conservation or preser-
8 vation easement;

9 (c) The presence of prime farmland, unique farmland,
10 farmland of statewide importance, other locally significant
11 farmlands and the productive capacity of the acreage;

12 (d) Whether the property offered is contiguous or
13 appurtenant to working farms;

14 (e) The ratio of the asking price, if any, of the easement
15 to the fair market value of the easement;

16 (f) The historical, architectural, archaeological, cultural,
17 recreational, natural, scenic, source water protection or

18 unique value of the easement: *Provided*, That determina-
19 tions of the authority or a county farmland protection
20 board are not a substitute for and do not have the effect of
21 other procedures under state or federal law for granting
22 protected status to land, including, but not limited to,
23 procedures under the National Historic Preservation Act
24 of 1966, as amended, or rules of the director of the historic
25 preservation section of the division of culture and history
26 authorized in section eight, article one, chapter twenty-
27 nine of this code, or procedures under the authority of the
28 tourism commissioner or the parks and recreation section
29 of the division of natural resources;

30 (g) The existence and amount of secured debt upon the
31 property, as determined by a title search, and whether the
32 total exceeds the agricultural value of the land as deter-
33 mined by the appraisal as required in subsection (d),
34 section fourteen of this article; and

35 (h) The length of the protective easement.

**§8A-12-16. Use of land for which conservation or preservation
easement acquired.**

1 (a) *Provisions to be included in conservation or preserva-*
2 *tion easement and county farmland protection board rules,*
3 *or the authority rules.* –Farmland upon which a conserva-
4 tion or preservation easement has been recorded may be
5 used for the following:

6 (1) Farm use;

7 (2) Businesses directly related to the retail sale of farm
8 products;

9 (3) Any activity performed for religious, charitable or
10 educational purposes or to foster tourism; and

11 (4) Any home-based business that does not require a
12 division of environmental protection permit to operate.

13 Notwithstanding any of the exceptions in this subsec-
14 tion, any use of land under preservation or conservation

15 easement must be consistent with the purpose of the
16 farmland protection programs.

17 (b) *Use for commercial, industrial or residential pur-*
18 *poses.* – Excepting existing and future uses described in
19 subsections (c), (d) and (e) of this section, a landowner
20 whose land is subject to a conservation or preservation
21 easement may not develop the land for any commercial,
22 industrial, residential or other nonfarm purpose. Nonresi-
23 dential, noncommercial, nonindustrial farm support
24 buildings or structures are permitted.

25 (c) *Exclusion for single residential dwelling.* – On
26 request to a county farmland protection board or the
27 authority, an owner may exclude two acres per each single
28 residential dwelling, which existed at the time of the sale
29 of the easement, from the easement prohibitions on
30 residential development. A land survey and recordation
31 identifying each single residential dwelling shall be
32 provided at the expense of the owner. However, before
33 any exclusion is granted, an owner shall agree with the
34 county farmland protection board or the authority not to
35 subdivide further for residential purposes any acreage
36 allowed to be excluded. This agreement shall be recorded
37 among the land records where the land is located and shall
38 bind all future owners.

39 (d) *Exclusion for certain existing and future uses.* – This
40 article neither abrogates nor creates any preexisting rights
41 in the land owned by any person not joining as a grantor
42 of a conservation or preservation easement. Neither the
43 creation nor the existence of a conservation or preserva-
44 tion easement shall prevent existing or future use of the
45 land based on a preexisting right, or prevent any existing
46 or future use consistent with state law with respect to
47 transmission and telecommunications facilities' rights-of-
48 way, easements and licenses.

49 (e) *Condemnation of private property for public use.* –
50 This article neither abrogates nor creates any rights
51 inconsistent with state or federal law respecting the power

52 of condemnation of private property for public use. Any
53 person or entity exercising the power of eminent domain
54 must pay compensation at not less than the fair market
55 value of the land to the court having jurisdiction of the
56 proceeding or as directed by the court. The term "fair
57 market value" as used in this subsection shall be deter-
58 mined without regard to the existence of the conservation
59 or preservation easement. Neither the creation nor the
60 existence of a conservation or preservation easement shall
61 prevent acquisition of real property, or any right or
62 interest in the property, for public use.

§8A-12-17. Funding of farmland protection programs.

1 (a) *County funds.* –

2 (1) *Creation of county funds.* – Once having created a
3 county farmland protection program, a county commission
4 may authorize the county farmland protection board to
5 create and maintain a farmland protection fund and hire
6 staff as it considers appropriate.

7 (2) *Sources.* – A county farmland protection fund is
8 comprised of:

9 (A) Any moneys not specifically limited to other uses and
10 dedicated to the fund by a county commission;

11 (B) Any moneys collected pursuant to section twenty-one
12 of this article;

13 (C) Any money made available to the fund by grants or
14 transfers from governmental or private sources; and

15 (D) Any money realized by investments, interest, divi-
16 dends or distributions.

17 (b) *State fund.* –

18 (1) *Created and continued.* – The West Virginia farmland
19 protection fund is created for the purposes specified in this
20 article.

21 (2) *Sources.* – The West Virginia farmland protection
22 fund is comprised of:

23 (A) Any money made available to the fund by general or
24 special fund appropriations;

25 (B) Any money made available to the fund by grants or
26 transfers from governmental or private sources;

27 (C) Any money realized by investments, interest, divi-
28 dends or distributions; and

29 (D) Any money appropriated by the Legislature for the
30 West Virginia farmland protection fund.

31 (3) *Disbursements.* –The treasurer may not disburse any
32 money from the fund other than:

33 (A) For costs associated with the staffing, administra-
34 tion, and technical and legal duties of the authority;

35 (B) For reasonable expenses incurred by the members of
36 the board of trustees of the authority in the performance
37 of official duties; and

38 (C) For consideration in the purchase of farmland
39 conservation and preservation easements.

40 (4) *Money remaining at end of fiscal year.* – Any money
41 remaining in the fund at the end of a fiscal year shall not
42 revert to the general revenue fund of the state, but shall
43 remain in the West Virginia farmland protection fund to
44 be used for the purposes specified in this article.

45 (5) *Budget.* – The estimated budget of the authority for
46 the next fiscal year shall be included with the budget of
47 the West Virginia department of agriculture.

48 (6) *Audit.* – The fund shall be audited annually.

**§8A-12-18. Disbursements by the authority to county farmland
protection boards.**

1 (a) *Applications; amount.* – If a county has established a
2 county farmland protection program, the authority shall
3 distribute within sixty days after the end of its fiscal year

4 at least eighty percent of that fiscal year's remaining funds
5 to county farmland protection boards who have certified
6 to the authority that there is then pending an application
7 for one or more conservation or preservation easements.
8 Each certification shall include:

9 (1) The name of each applicant for an easement and the
10 date of each application for an easement during the fiscal
11 year;

12 (2) A description of the property upon which an ease-
13 ment is offered; and

14 (3) An appraisal of the value of the conservation or
15 preservation easement as provided in section fourteen of
16 this article.

17 (b) *Disbursement formula.* – Disbursement of authority
18 funds to qualifying counties shall be based on the ratio of
19 each county farmland protection board's appraisal value
20 of conservation and preservation easement applications,
21 including those applications to donate easements, received
22 during the fiscal year to the total of the appraisal value of
23 all applications for conservation and preservation ease-
24 ments for the fiscal year received by the authority from
25 county farmland protection boards. Applications for
26 easement donations may only be counted if the county
27 farmland protection board holds or coholds the easement.

**§8A-12-19. Classification of land subject to conservation or
preservation easement.**

1 Notwithstanding any statute or rule to the contrary, any
2 property held or coheld by a holder under a conservation
3 or preservation easement as defined in this article, regard-
4 less of ownership, shall be taxed as "agricultural lands"
5 for ad valorem property tax purposes without further
6 requirement, restriction or disqualification. For ad
7 valorem property tax purposes, any property held or
8 coheld by a holder under a perpetual conservation or
9 preservation easement as defined by this article, regardless

10 of ownership, shall be taxed as "agricultural lands"
11 without further requirement, restriction or disqualifica-
12 tion.

§8A-12-20. Authorization for commissioner of agriculture to promulgate proposed rules.

1 The commissioner of agriculture may propose rules for
2 legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code to imple-
4 ment the provisions of this article.

§8A-12-21. Tax on privilege of transferring real property.

1 (a) Notwithstanding the provisions of section two, article
2 twenty-two, chapter eleven, and effective the first day of
3 January, two thousand three, and thereafter, in addition to
4 the tax imposed pursuant to article twenty-two, chapter
5 eleven of this code, any county commission that has
6 created a farmland protection program may impose an
7 additional county excise tax for the privilege of transfer-
8 ring title to real estate at the rate of no more than one
9 dollar and ten cents for each five hundred dollars' value or
10 fraction thereof, as represented by any document as
11 defined in section one, article twenty-two, chapter eleven
12 of this code, payable at the time of delivery, acceptance or
13 presentation for recording of the document.

14 (b) The tax imposed pursuant to this section is to be
15 administered and collected as the tax on the privilege of
16 transferring title to real estate imposed pursuant to the
17 provisions of article twenty-two, chapter eleven of this
18 code.

19 (c) The tax imposed pursuant to this section is to be used
20 exclusively for the purpose of funding farmland preserva-
21 tion.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *7th*
Day of *April*, 2004.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4.1.04

Time 10:02 AM